

THE PRESIDENT'S EXECUTIVE ACTIONS ON IMMIGRATION AND THEIR IMPACT ON FEDERAL AND STATE ELECTIONS

JOINT HEARING

BEFORE THE
SUBCOMMITTEE ON NATIONAL SECURITY
AND THE
SUBCOMMITTEE ON HEALTH CARE,
BENEFITS AND ADMINISTRATIVE RULES
OF THE
COMMITTEE ON OVERSIGHT
AND GOVERNMENT REFORM
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THE PRESIDENT'S EXECUTIVE ACTIONS ON IMMIGRATION AND THEIR IMPACT ON FED- ERAL AND STATE ELECTIONS

Thursday, February 12, 2015,

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON NATIONAL SECURITY, JOINT WITH THE
SUBCOMMITTEE ON HEALTH CARE, BENEFITS AND
ADMINISTRATIVE RULES,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, DC.

The subcommittees met, pursuant to notice, at 2 p.m., in room 2154, Rayburn House Office Building, the Honorable Ron DeSantis [chairman of the Subcommittee on National Security] presiding.

Present from Subcommittee on National Security: Representatives DeSantis, Hice, Duncan, Lynch, Kelly, and Lieu.

Present from Subcommittee on Health Care, Benefits and Administrative Rules: Representatives Jordan, Carter, Hice, Meadows, Walker, DeSantis, Walberg, Watson Coleman, Norton, and DeSaulnier.

Also present: Representatives Chaffetz and Castro.

Mr. DESANTIS. The subcommittee will come to order.

Without objection, the chair is authorized to declare a recess at any time.

We are a government of, by, and for the American people. This means that the American people can, through their elected representatives, set whatever policies, including immigration policy, they see fit. The law can allow for unlimited immigration, limited immigration, or even zero immigration. But when the Government fails to enforce whatever laws happen to be on the books, it undermines our ability to govern ourselves.

Likewise, when the President issued his executive edict granting five million work permits and Social Security numbers for individuals illegally present in our Country, which, by the way, will also make these individuals eligible for taxpayer finance welfare payments, he harmed the American people's ability to govern themselves. After all, the American people never voted for such a policy. Indeed, the stinging rebuke delivered to the President's party in November, if anything, provided evidence that the public rejected what the President had long been threatening to do.

Under the President's policy, U.S. workers will face a \$3,000 hiring disadvantage due to the Affordable Care Act. The American people had no say in enacting such a policy. Legal immigrants will see the hefty application fees they must pay to be diverted to ad-

minister the President's unconstitutional program, which will make these legal immigrants wait longer. The American people never approved such unfairness.

Taxpayers will be on the hook to pay, as Commissioner John Koskinen said just yesterday, retroactive tax credit payments to people who were working in our Country illegally for years. The American taxpayer was never given a voice about this.

So the President's policy undermines our basic ability to govern ourselves. And the reason we are having this hearing today is to showcase an even more significant, perhaps, ramification of what the President has done, a ramification that could undermine the integrity of our elections.

Through the President's executive actions, millions of non-citizens will be able to obtain valid Social Security numbers and State driver's licenses. Under Federal law, any person with a valid Social Security number or driver's license can register to vote as long as he attests to his eligibility to do so. Therefore, the President's executive actions dramatically increase the risk that non-citizens may illegally register to vote.

Now, the problem of non-citizens voting already exists. Some experts have found that thousands of non-citizens may be registered to vote in some States, and perhaps as many as tens of thousands nationwide. A study that was released last year found that some non-citizens do participate in U.S. elections and that this participation has already had a meaningful effect in election outcomes, including electoral college votes and congressional elections.

The President's executive actions make this problem of non-citizen voting worse without offering any solutions or assistance to the States. Non-citizen voting undermines voter confidence and damages the integrity of Federal elections. And make no mistake, as an elected official, I don't want my vote totals diminished because of a non-citizen to vote, but I also don't want them to be enhanced, either. I want the actual voice of the American people to carry the day.

Today we will hear from secretaries of State, officials tasked with the responsibility of administering elections in their States. They will testify how the President's executive actions will affect their voter registration rolls and their elections in their States. In fact, one of our witnesses today, Ohio Secretary of State Jon Husted, wrote to President Obama about this very issue. He requested his Administration to "work with us to minimize the impact on the integrity of our elections and to ensure only eligible voters participate in State and Federal elections."

We will also hear from an expert on voter fraud and voting rights laws issues to help us understand the consequences of the President's executive actions.

Today's hearing is about upholding the integrity of our elections and ensuring that every American's vote counts.

This is the first hearing that we have had on the Subcommittee on National Security, but it is a joint hearing with my friend, Jim Jordan. But I did want to recognize the ranking member on our National Security Subcommittee, Stephen Lynch, from the frozen tundra of Boston.

I am happy to work with you, Stephen, although I am jealous. Coming from Boston, you guys four Super Bowls in the last 15 years, three World Series. We don't get that much love in Florida.

With that, I will recognize the ranking member for 5 minutes.

Mr. LYNCH. Well, I appreciate the congratulations and the condolences for the weather.

Mr. Chairman, I want to thank you and I also want to thank our panel of witnesses that have come forward to help the committee with its work.

While I do share President Obama's frustration with the inability of Congress to produce a balanced and sustainable immigration policy, I do have some lingering concerns about the precedence set by the President's executive actions on immigration, especially when it comes to other major issues that a future Congress may struggle to address. That is why I continue to welcome the opportunity as a direct representative of my constituents to consider and debate our Nation's immigration policy on its merits.

Regrettably, the looming February 27 deadline to avoid a shutdown of the entire Department of Homeland Security demonstrates that some Members of Congress have chosen a more drastic route in response to the President's executive action. In particular, Republican leadership is attempting, I think, to condition our Nation's continued anti-terrorism, border enforcement, and cybersecurity funding on reversing the President's immigration orders. And I am not sure, but to is a partial Government shutdown and furloughing of approximately 30,000 dedicated Homeland Security employees an appropriate response to the President's executive orders? I am not so sure that it is.

Similarly, today's hearing now attempts to tie the debate over the President's executive action to a different and unrelated issue, I think, the misguided, at times, premise that the President's immigration orders pose a threat of voter fraud by non-citizens who will somehow hijack the election process and thereby threaten our national security.

The rights of citizens in this Country to vote is one of the most basic tenets of who we are as a people and is a cornerstone of our democratic system that must be protected. However, the threat we are here to discuss today is virtually nonexistent if you look at the legal and electoral evidence.

Non-citizen voter fraud is not, in fact, an active or present threat to our national security. None of the President's executive actions on immigration launch voter fraud into the realm of a clear and present danger or national security concern.

The truth is the President's actions leave State and Federal voting requirements untouched. I want to repeat that. The President's actions leave State and Federal voting requirements untouched. They do not change Federal elections law and they leave State elections laws unaltered.

Nevertheless, it appears that we are here today to discuss voter fraud, especially by non-citizens present in the Country.

I understand some of our witnesses have expressed concerns to the contrary; however, it simply does not seem plausible that immigrants who apply for deferred action will then choose to ignore Federal and State laws prominently displayed on voter registration

forms and then fraudulently attest to being a U.S. citizen just so they can illegally register to vote.

When you look at the penalties that would be on an individual in that case, that might have received a deferred status and is allowed to come to the Country, that they would risk all of that to vote in an election where only 30 or 40 percent of our own citizens, without penalty, choose to vote in those elections, it just strains the realm of credibility.

Further, this argument presumes that these people will then fraudulently vote en masse in order to affect the outcomes of elections in swing States, even though this means that under the immigration law they will be deemed ineligible for admission to the U.S. or other immigration benefits, the very kinds of benefits these people are seeking in the first place.

To fraudulently vote, non-citizens would have to ignore every real consequence of voter fraud, such as being deported if discovered. And yet some of my colleagues claim that we should be worried about a flood of these instances.

I looked at the numbers, thinking that perhaps despite all the protections in place, this is a widespread problem. But studies and investigations have shown that non-citizen voter fraud makes up .00003 percent, the tiniest percentage of votes cast in this Country.

Just to cite a few examples, only 17 instances of non-citizen voter fraud, again, .0003 percent of the total votes cast were found through Ohio Secretary of State Jon Husted's own investigation, and he is here to testify today, of the 2012 general elections.

Additionally, in a State legislative hearing on the issue in Kansas last year, Secretary of State Kobach, again a guest of us this morning, could only cite 20 non-citizen registrants in the whole State. And out of the 20 non-citizens who were registered, only 5 actually voted, so they are having the same problem with non-citizens voting as we are with citizens actually coming to vote.

So, again, I am disappointed that we are here today spending our valuable time and resources on unfounded concerns, because there are some real concerns out there. I realize that the President's executive orders have spurred extremely polarizing conversations in Congress, but as the ranking member of the National Security Subcommittee, I hope I can work with you, Mr. Chairman, to refocus on our efforts on some of the very real issues that we face moving forward.

Again, I want to thank the panelists for taking the time from their important responsibilities to testify today, and I especially look forward to hearing more about what we are doing to protect the rights of eligible voters in our States and getting the 60 to 70 percent of voters who are legal citizens of this Country but who don't choose to vote.

Thank you, and I yield back.

Mr. DESANTIS. The vote clock, it looks like we have about 4 minutes left on the vote tally. I wanted to get Mr. Jordan's opening Statement, but I think it would be prudent just to recess the hearing now. When we return, Mr. Jordan will give his Statement, Ms. Norton will give hers, the witnesses will give theirs, and then the members will be able to ask some questions.

So we stand in recess until the conclusion of this first vote series.

[Recess.]

Mr. DESANTIS. Before I recognize my colleague, Chairman Jordan, I ask unanimous concern that our colleague from the 20th District of Texas, Congressman Joaquin Castro, be allowed to fully participate in today's hearing. Without objection, so ordered.

I now recognize Mr. Jim Jordan, chairman of the Subcommittee on Health Care, Benefits and Administrative Rules for his opening Statement.

Mr. JORDAN. I thank the chairman.

In the previous, Mr. Lynch, the ranking member, talked about just 20 non-citizens on the voter rolls in Kansas, I think was the example. If it's one, that is a problem. And the issue today is there is potentially five million more potential problems.

So let's remember what got us here. Twenty-two times the President said he couldn't do what he turned around and did. His actions violated the rule of law and the United States Constitution. You don't have to take my word for it; we have all kinds of law professors who say what he did was unlawful and a violation of the Constitution. And not just any law professors, all kinds of liberal law professors said that.

But the point is also it is not just the unconstitutional action the President took last November; it is the unfairness of that action. As the chairman pointed out in his opening Statement, is it fair to seniors that non-citizens are going to get Social Security benefits? Is it fair to taxpayers that non-citizens are going to get tax refunds? Is it fair to legal immigrants that non-citizens, illegals, are going to get moved to the front of the line and slow down the legal immigrants from getting the status they deserve? And is it fair that now there is the potential for non-citizens to participate in our elections?

Those are the issues and that is why we are having this hearing, and that is why I want to welcome our panel. I particularly want to welcome Jon Husted, our Secretary of State, who has done an outstanding job in a State that is always the center of the universe every 4 years in Presidential elections, and just done a commendable job in his work running the elections in our State.

Seven Democrats, Mr. Chairman, seven Democrats in the U.S. Senate, if they would just do what they said should be done last November. Last November, when the President did his violation of the rule of law, violation of the Constitution, executive amnesty order, seven Senate Democrats said it was wrong. If they would just vote to allow our bill to come up for debate. They can amend it, they can try to change it; that is how the process works. They won't even let it come up. If seven Democrats would just do what they said last year should be done, we could get this Department of Homeland Security funded and we could stop the unconstitutional action of the President.

And I again want to thank our panel for being here and highlighting one of the real concerns that exist because of what the President did.

With that, I yield back.

Mr. DESANTIS. The gentleman yields back.

The chair now recognizes Ms. Norton, Ranking Member of the Subcommittee on Health Care, Benefits, and Administrative Rules, for her opening Statement.

Ms. NORTON. I thank you, Mr. Chairman. Actually, I am here for the ranking member. I am a member of the full committee and a member of this subcommittee, but I want to express my condolences to the chair of this committee, Matt Cartwright, whose father passed and who, therefore, cannot be here today. I know our thoughts and prayers are with Representative Cartwright.

This hearing on immigration fraud by non-citizens would be laughable if the subject were not so serious. Latino and other people of color and other immigrants will not regard it as very funny. They will be particularly insulted by this faux hearing on a non-existent issue, and they will be joined by countless of other Americans.

I quote from the testimony, which I will ask to be included in the record, of the Ohio State NAACP. As they say in their testimony, "Voter fraud has not been perpetuated by immigrants, nor have they been exacerbated by changes in national immigration policies. Rather, we have spent 106 years battling voting fraud, which was perpetuated primarily by election officials who refused to register voters because of what they look like or whose purges appear to be concentrated among certain demographics."

This hearing, coming as it does on the 50th anniversary of the Voting Rights Act, when Republicans and Democrats are about to go to Selma to commemorate that Act in March, comes close to an insult, and this is particularly so when the Majority has announced, indeed, announced early, that the House will not even have a hearing on the Voting Rights Act.

I want to take a moment to thank Representative Jim Sensenbrenner, Republican of Wisconsin, and Representative John Lewis, Democrat of Georgia and a hero of the civil rights movement, for their co-sponsorship of a bill to update the Voting Rights Act of 1965, as instructed by the Supreme Court of the United States.

It takes chutzpah, or disregard, or even disrespect, to hold a hearing alleging fraud by Latino and other immigrants. What have they received? Only the rudimentary right, the temporary permission to remain in this Country to work, unrelated entirely, of course, as the Majority knows, to the right to vote. The data about fraud is manifestly and overwhelmingly in the other direction. We should be glad that there is something in this Country that you don't have to have a hearing about.

It took minority Americans 150 years after the Civil War to get the same right to vote that other Americans took for granted and often don't even exercise. A couple of years ago the Supreme Court did not nullify the Voting Rights Act, but they did ask this Congress to update it. Instead, we see States covered by the Act already passing laws designed to keep black people and Hispanics from voting, manifestly so, and we see Republicans in the rest of the Country spreading barriers, including Ohio, where we have a witness today and one of the States involved.

The President's executive order gives immigrants the right to stay; immigrants who have been here for years; immigrants who have been working hard and whose labor we have needed. Even

the bipartisan immigration reform bill passed by the Senate last Congress would have postponed the right to vote for immigrants for more than a decade.

The Republicans may want to go down in history as the party who tried once again, 100 years later, to nullify the right to vote. Well, I am here today to say they shall not succeed.

Thank you, Mr. Chairman.

Mr. DESANTIS. The gentlelady's time has expired.

I will hold the record open for five legislative days for any members who would like to submit a written Statement.

We will now recognize our first panel of witnesses. I am pleased to welcome the Honorable Jon Husted, Secretary of State for the State of Ohio; the Honorable Kris Kobach, Secretary of State for the State of Kansas; The Honorable Hans von Spakovsky, Senior Legal Fellow at the Edwin Meese Center for Legal and Judicial Studies at The Heritage Foundation; and the Honorable Matthew Dunlap, Secretary of State for the State of Maine. Welcome all.

Pursuant to committee rules, all witnesses will be sworn in before they testify, so please rise and raise your right hand.

Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth?

[Witnesses respond in the affirmative.]

Mr. DESANTIS. All witnesses answered in the affirmative. Thank you. Please be seated.

In order to allow time for discussion, please limit your testimony to 5 minutes. Your entire written Statement will be made a part of the record.

With that, Mr. Husted, you are up.

WITNESS STATEMENTS

STATEMENT OF THE HONORABLE JON HUSTED

Mr. HUSTED. Thank you, Chairman DeSantis and Ranking Member Lynch and the members of the subcommittee. I appreciate the opportunity to be here today. My name is Jon Husted. I am the Ohio Secretary of State, and in that capacity I serve as our State's chief election official. I am here to proactively address what I believe is an important issue facing my State and the Nation regarding the integrity of our elections.

As the chief elections official in a key swing State, I have tried to build an election system where it is easy to vote and hard to cheat. We have done this by ensuring easy access to the voting process and by working to ensure that only eligible voters are on the voting rolls. I want to bring to your attention my concern that the President's recent immigration accountability executive actions will make it more difficult for elections officials to determine if all voters meet the primary standard for voting, which is U.S. citizenship.

I am not here to debate immigration policy or the President's executive actions. However, I am here to emphatically say that we cannot follow both the Federal law and the executive action and ensure the integrity of the elections process without further assist-

ance from Congress or from the Obama Administration. Let me briefly explain why.

For an estimated four to five million non-citizens, the President's executive actions provide access to Social Security numbers and driver's licenses. These are the same documents that Federal law requires the States to recognize as valid forms of identification for voter registration. Under Federal law, anyone with a valid Social Security number or driver's license number can register to vote provided they attest they are a U.S. citizen. However, there is no way for us to validate this citizenship Statement since, under the executive actions previously, undocumented non-citizens will have access to the same documents as U.S. citizens.

This issue becomes especially complicated in States like Ohio, where millions of dollars are spent on third-party voter registration drives where no election official would be present to make clear the eligibility requirements for voting. By signing the voter registration form and asserting citizenship falsely or erroneously, non-citizens could face real legal consequences. In Ohio, falsification is a fifth degree felony. This could affect their ability to remain in the United States and to become citizens.

Let me interject some perspective before I go further. It is not my belief that four to five million non-citizens are going to get on the voting rolls. Nor is it my belief that third-party registration drive organizers are waiting to exploit this loophole in law. While I am committed to ensuring the security and the integrity of the elections in Ohio and throughout the Country, it is important for us to recognize that people can sometimes sign documents, in this case a voter registration form, without fully comprehending the rules and requirements.

Acknowledging that I do not expect this to be a systemic or widespread problem, we also cannot ignore that there are real electoral consequences. Presidential elections get most of the attention, but every year there are thousands of State and local elections in Ohio, and in the last 15 months alone 70 elections in our State were decided by one vote or tied. Seventy elections were decided by one vote or tied. These were mayoral elections, school and tax levies, bond issues, members of city councils, township trustees, and school boards.

In light of these examples alone, we simply cannot overlook policies that may allow ineligible voters to cast ballots. We want to find the least intrusive solution to closing this loophole without making it unnecessarily difficult to register to vote.

While opinions may vary on the best solution for this issue, one thing is clear: we cannot solve this Federal problem solely at the State level alone.

In a letter to President Obama on January the 27th, I asked that his Administration provide election officials with realtime access to accurate searchable electronic data bases of non-citizens who have valid Social Security numbers. This would enable me and my counterparts in other States to prevent illegal registrations and, more importantly, reassure the public that steps have been taken to ensure only eligible voters are participating in Federal, State, and local elections.

In Ohio we are what we can to prevent non-citizen registrations in voting. We electronically share data between the State's Bureau of Motor Vehicles and our county boards of elections which process voter registrations. This partnership and the data provided allow my office to conduct a review of Ohio's voter rolls to determine if, through the use of a driver's license, non-citizens were registered to vote in Ohio.

Following the 2012 Presidential election, we found through this information that 291 non-citizens were registered to vote and 17 had actually cast ballots. Those 17 were referred for further investigation and prosecution, and my office sent letters to the other 274 to cancel their voter registrations.

However, without Federal assistance, we cannot perform the same cross-match with registrations using Social Security numbers. As a result, these executive actions could significantly increase the potential pool of illegal registrations in Ohio and around the Country.

It is also important to note that Federal law limits the ways States can maintain their voter rolls, in some cases prohibiting States from removing a voter from the rolls until they have been inactive for two consecutive Federal general elections. That means that when evidence suggests a person is a non-citizen on the rolls, we cannot remove them immediately; they have to remove themselves. This makes it especially important that we prevent an ineligible voter from getting on the rolls in the first place.

As I Stated earlier, my focus as the chief elections official in Ohio is to make it easy to vote and hard to cheat. The debate over voter fraud and voter suppression already breeds significant hyperbole from across the political spectrum that erodes public confidence. In this environment, administering elections fairly and accurately becomes more difficult when the path exists where millions more non-citizens can register to vote in elections and elections officials have no way to identify these individuals.

[Prepared Statement of Mr. Husted follows:]



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**STATEMENT OF JON A. HUSTED
OHIO SECRETARY OF STATE**

ON

**THE PRESIDENT'S EXECUTIVE ACTIONS ON IMMIGRATION AND THEIR
IMPACT ON FEDERAL AND STATE ELECTIONS**

BEFORE THE

**U.S. HOUSE OF REPRESENTATIVES SUBCOMMITTEES ON NATIONAL
SECURITY AND HEALTHCARE, BENEFITS & ADMINISTRATIVE RULES**

FEBRUARY 12, 2015

Chairman DeSantis, ranking member Lynch and members of the Subcommittee on National Security and Subcommittee on Healthcare, Benefits and Administrative Rules, my name is Jon Husted and I am the Ohio's Secretary of State, and in that capacity I serve as our state's chief elections official.

Thank you for the opportunity to be here today to proactively address what I believe is an important issue facing my state and the nation regarding the integrity of our elections.

As the chief elections official in a key swing state, I have tried to build an elections system where it is easy to vote and hard to cheat. We've done this by ensuring easy access to the voting process and by working to ensure that only eligible voters are on the voting rolls.

I want to bring to your attention my concern that the President's recent *Immigration Accountability Executive Actions* will make it more difficult for elections officials to determine if all voters meet the primary standard for voting -- U.S. citizenship.

I am not here to debate immigration policy or the President's executive actions. However, I am here to emphatically say that we cannot follow both the federal law and the executive action and ensure the integrity of the elections process without further assistance from Congress and the Obama administration.

I'll briefly explain why.

For an estimated four to five million non-citizens, the President's executive actions provide access to Social Security numbers and driver's licenses. These are the same documents that federal law requires the states to recognize as valid forms of identification for voter registration.

Under federal law, anyone with a valid Social Security number or driver's license number can register to vote, provided they attest that they are a U.S. citizen. However, there is no way for us to validate this citizenship statement, since under the executive actions previously undocumented non-citizens will have access to the same documents as U.S. citizens. The issue becomes especially complicated in states like Ohio where millions of dollars are spent on third-party voter registration drives where no election official would be present to make clear the eligibility requirements for voting.

By signing a voter registration form and asserting citizenship, falsely or erroneously, non-citizens could face real legal consequences. In Ohio, falsification is a 5th degree felony -- this could affect their ability to remain in the United States and become citizens.

Let me interject some perspective before I go further. It is not my belief that four to five million non-citizens are going to get on the voting rolls, nor is it my belief that third-party registration drive organizers are waiting to exploit a loophole in law.

While I am committed to ensuring the security and integrity of elections in Ohio and throughout the country; it is important for us to recognize that people can sometimes sign documents -- in this case a voter registration forms -- without fully comprehending the rules and requirements.

Acknowledging that I do not expect this to be a systemic or widespread problem, we also cannot ignore that there are real electoral consequences. Presidential elections get the most attention, but every year there are thousands of state and local elections in Ohio, and in the last 15 months alone, 70 elections were decided by one vote or tied.

These were mayoral races, school and tax levies, bond issues, members of city councils, township trustees and school boards. In light of these examples alone we simply cannot overlook policies that may allow ineligible voters to cast ballots.

We want to find the least intrusive solution to closing this loophole without making it unnecessarily difficult to register or vote.

While opinions may vary as to the best solution for this issue, one thing is clear: We cannot solve this federal problem solely at the state level alone.

In a letter to President Obama on January 27, I asked that his administration provide state elections officials with real-time access to accurate, searchable, electronic databases of non-citizens who have valid Social Security numbers.

This would enable me and my counterparts in other states to prevent illegal registrations, and more importantly, reassure the public that steps have been taken to ensure only eligible voters are participating in federal, state and local elections.

In Ohio, we are doing what we can to prevent non-citizen registrations and voting.

We electronically share data between the state's bureau of motor vehicles and the county boards of elections, which process voter registrations. This partnership and the data provided have allowed my office to conduct a review of Ohio's voter rolls to determine if, through the use of a driver's license, non-citizens were registered to vote in Ohio.

Following the 2012 Presidential election we found through driver's license information that 291 non-citizens were registered to vote and 17 had actually cast ballots. Those 17 were referred for further investigation and possible prosecution and my office sent letters to the other 274 to cancel their voter registrations.

However, without federal assistance we cannot perform the same cross match on registrations using Social Security numbers. As a result, these executive actions could significantly increase the potential pool of illegal registrations in Ohio and around the country.

It is also important to note that federal law limits the ways states can maintain their voter rolls, in some cases prohibiting states from removing a voter from the rolls until they have been inactive for two consecutive federal general elections. That means that when evidence suggests

that a person is a non-citizen on the rolls we cannot remove them immediately, they have to remove themselves.

This makes it especially important that we prevent an ineligible voter from getting on the rolls in the first place.

As I stated earlier, my focus as the chief elections official in Ohio is to make it easy to vote and hard to cheat. The debate over voter fraud and voter suppression already breeds significant hyperbole from across the political spectrum that erodes public confidence. In this environment, administering elections fairly and accurately becomes more difficult when a path exists by which millions more non-citizens can register to vote and elections officials have no way to identify these individuals.

What we need to resolve this problem is access to the names, date of birth and last four digits of Social Security numbers for non-citizens who receive a Social Security number. We can then cross match that information with our statewide voter database.

I welcome any assistance this committee is able to provide me and my colleagues across the nation.

With your help, we can ensure the confidence of the American voter remains intact by preserving the integrity of our elections systems.

Thank you again for the opportunity to come before the committee today to speak on this issue. I am happy to answer any questions.

Mr. DESANTIS. Thank you, Mr. Husted. Your time has expired. We are going to take your Statement, it will be entered in the record, and you will have the ability to expand on some of that with our questions.

The chair now recognizes Secretary Kobach for 5 minutes.

STATEMENT OF THE HONORABLE KRIS KOBACH

Mr. KOBACH. Thank you, Mr. Chairman and members of the committee. I come to you chiefly in my capacity as Kansas's Secretary of State, but also in my private capacity I am the lead attorney representing 10 ICE agents who sued the Secretary of Homeland Security in the case of Crane vs. Napolitano, now Crane vs. Johnson. The District Court in Texas ruled that the President's first executive amnesty violates Federal law at 8 U.S.C. 1225(b)(2)(A) by ordering ICE agents to refrain from placing into removal proceedings aliens who are required to be placed into removal proceedings by Federal law.

I mention this because it is problematic for so many legal reasons what this executive amnesty has done. But let's talk a little bit about the voter fraud that we have observed empirically in the State of Kansas.

At the outset, it is important to note that four States, Kansas, Arizona, Georgia, and Alabama, require proof of citizenship, documentary proof of citizenship when the person registers. In the other 46 States they are exceedingly vulnerable to what this executive amnesty has done, but even in those four States, because of the recent decision of the Election Assistance Commission, a board that is not supposed to have any policymaking authority, people can use the Federal form to circumvent our proof of citizenship requirement in those four States.

I want to give you a few examples of aliens being registered and voting illegally in the State of Kansas. The most notorious case was in Seward County, in southwest Kansas, in 1997. There was a county issue on the ballot whether or not to prohibit a certain kind of hog farming operation. Across the border, in Guymon, Oklahoma, there was a processing plant where they hoped to render the hogs that were raised in Kansas.

Shortly before election day, according to the testimony of the county clerk of Seward County, an envelope arrived with about 50 registration cards from employees at the hog processing plant in Oklahoma giving, in many cases, fictitious addresses in Kansas and asking to be registered in Kansas. She knew, based on her own personal knowledge of some of the individuals and in subsequent observations, that many, if not, most of these were not U.S. citizens, and also based on her knowledge of the composition of the plant employee base. But she was powerless at that time to do anything about it.

They were registered and on election day many van load after many van load of employees at the Guymon plant in Oklahoma came north and voted in Kansas to try to steal that election. Fortunately, it was a very high election turnout; it was a very contentious issue. Fifty-one percent turned out and the illegal votes did not prevail and sway and overcome the votes of the U.S. citizens.

I want to give you another example. In August 2010, across the river from where I live, I am in Kansas City, Kansas, in North Kansas City, Missouri, this one has been widely reported in the press, August primary in a district for a State representative seat between Rizzo and Royster. According to the sworn testimony of poll workers, and I have attached one of those to my written testimony, they observed approximately 50 Somali nationals who were brought in by a coach and the ballot was translated for those individuals. They were instructed to vote for Mr. Rizzo and in that case Mr. Rizzo won the election by one vote. Successful use of aliens to steal an election.

Again, it occurs typically in smaller elections, not so much in mass, nationwide elections.

I give you another example in my testimony of 20 aliens in Kansas. Now, it was mentioned in some of the opening remarks that, well, that 20 is not very much. Well, those 20 are the ones where we know the exact name of the alien and we presented those to Federal District Court in a separate litigation. We know of many others, including the 50 in Seward County, but we don't have the exact names.

And this illustrates a problem. Once the alien gets on the voter rolls, there is no magical way you can say that must be an alien or that must be an alien. You cannot identify them once they are on, except for very limited ways, such as using your driver's license data base to cross-match in those limited cases where the driver's license indicates that it is an alien and not a citizen. So this is an irreversible consequence. Once these individuals get on the voter rolls, you are not going to get them off except in very, very rare circumstances.

Now, I want to talk a little bit about how the President's directive actually exacerbates the problem. In many States these aliens will get a driver's license once they have an employment authorization document. Some States, like Wisconsin, State law requires it to be issued. In all of the 10 States of the Ninth Circuit now, they will have to give these individuals driver's licenses. That comes out of a decision that the Ninth Circuit rendered last year. So that does change things.

Five point eight million illegal aliens who previously did not have a driver's license now have the ability to get one, and they certainly have the ability to get a Social Security number, which will in turn allow them to register to vote. If these aliens in Kansas, or in Arizona, Alabama, Georgia, even our States where you have proof of citizenship, if they use the Federal form, they can register to vote.

This is a problem. These consequences are irreversible. And we are trying to fight this in the courts, but the courts are taking a long time to hear these issues, even though they have, to date, agreed with our position that it is illegal and it is a problem. The consequences are not imaginary, the numbers are real, and we need your help in dealing with it.

[Prepared Statement of Mr. Kobach follows:]

**Testimony of Kris W. Kobach
Kansas Secretary of State**

**Before the United States House of Representatives
Committee on Oversight and Government Reform
Subcommittee on National Security, and
Subcommittee on Health Care, Benefits, and Administrative Rules
Hearing on “The President’s Executive Actions on Immigration
and Their Impact on State and Local Elections”**

February 12, 2015

Mr. Chairman and Members of the Committee, I come before you today chiefly in my capacity as Kansas Secretary of State. However, I also serve in my private capacity as the lead attorney representing the ten ICE agents who have sued the Secretary of Homeland Security for the reason that the DACA Directive of June 2012 orders the agents to violate federal law. The US District Court for the Northern District of Texas held that the DACA Directive compels ICE agents to violate the requirements of federal law found at 8 U.S.C. § 1225(b)(2)(A). *Crane v. Napolitano*, 2013 U.S. Dist. LEXIS 57788. The case is currently pending before the Fifth Circuit of the U.S. Court of Appeals. *Crane v. Johnson*, Case No. 14-10049. In both capacities, I have observed the troubling consequences of the Obama Administration’s executive actions.

Four States Require Proof of Citizenship to Prevent Aliens from Voting.

At the outset, it is important to note that four States – Kansas, Arizona, Georgia, and Alabama – require documentary proof of citizenship in order to register to vote. The other 46 states require no such proof of citizenship and face considerably greater vulnerability to the problems caused by the executive actions in immigration. However, even the four states that require proof of citizenship are vulnerable, due to a recent decision of the Election Assistance Commission that allows registrants who use the federal voter registration form to avoid proving their citizenship.

The Problem of Aliens Registering and Voting is Very Real.

The problem of aliens registering to vote is a massive one, nationwide. And I have seen it firsthand in Kansas. Because there is no way of scanning a state’s voter rolls and identifying which of the registered voters are aliens, determining the exact number of aliens on the voter rolls is virtually impossible. But we know that the number is significant, because specific election episodes present evidence of aliens voting and because we can gain some information by

matching driver's license databases against voter rolls. We have used both methods in Kansas, and the substantial evidence of alien voting helped convince the Kansas Legislature to adopt our proof of citizenship requirement, which I proposed in 2011 (along with our photo ID requirement and our security requirements for mail-in ballots).

(1) Seward County, Kansas

The most notorious case of aliens voting in Kansas comes from a county-wide election in Seward County, in the southwest corner of the State. In 1997, Charter Resolution 97-3 to prohibit large hog farming operations was a referendum issue that was placed before county voters. It was a hugely controversial issue that generated 51% voter turnout for the countywide special election. The investors in the proposed hog farming operation were working with a hog processing plant across the state line in Guyman, Oklahoma; and they hoped to raise the hogs in Kansas and render the hogs in Oklahoma. But they would have to win the county referendum in order to bring their plan to fruition.

In the run-up to the election, an astonishing thing happened. More than 50 employees of the Guyman, Oklahoma, hog processing plant sent in voter registration applications in a single envelope addressed to the county clerk's office in Seward County, Kansas. Many of the registration forms contained made-up addresses in Seward County. However, the clerk had no legal authority to reject the registration applications.

Then, on election day, the workers at the Oklahoma hog processing plant were bussed to the Seward County, Kansas, clerk's office in a series of vanloads to vote. The county clerk strongly believed that the registrants were non-citizens, based on her knowledge that most of the plant employees were not citizens, based on the fact that the driver of the van was translating the ballot for the plant employees who could not read English, and based on the fact he was overheard telling the plant workers how to vote. In some cases, personnel at the clerk's office knew that the specific voters were not U.S. Citizens. However, they were powerless to disqualify the voters. All that the clerk could do was instruct the driver not to tell the workers how to vote. At the end of the day, the attempt to use alien votes to steal the election fell short.

(2) North Kansas City, Missouri

Another, more recent, incident of alien voting occurred in August 2010 across the state line in Kansas City, Missouri. In the Democratic primary race for state representative between J.J. Rizzo and Will Royster – a race in which the winner of the primary would almost certainly win the general election – multiple forms of voter fraud occurred. The most troubling was the coordinated voting by members of the Somali refugee community in the North Kansas City area.

On election day, poll workers observed a total of more than 50 Somalis who showed up at the polls to vote. Similar to the Seward County, Kansas, episode, they were escorted into the polling place by a translator/coach. Unable to speak English, the Somalis were directed by the

coach how to vote. They were all told to vote for Rizzo. On this occasion, the use of alien votes to steal the election succeeded; Rizzo won the election. The margin of victory? One vote. I have attached to my testimony an affidavit from a supervising poll judge who observed the fraud firsthand at one of the polling locations where it occurred.

(3) Aliens Found on the Voter Rolls Using Driver's License Databases

One way that a state can identify a small subsection of the aliens on its voter rolls is to cross-check its voter rolls against the state's list of driver's licenses, if the state designates some of its driver's licenses as being held by aliens. In Kansas, in 2009 and 2010, this was done by taking the names of holders of "temporary driver's licenses" that had been issued to aliens during 2007-2010 and checking them against the names on the State's voter rolls. The exercise yielded the names of 20 aliens who had successfully registered to vote before Kansas implemented its proof-of-citizenship requirement in 2013. And many of them had voted. However, it should be noted that this is a small subset of the total number of aliens on our voter rolls: it only includes those aliens who obtained a Kansas driver's license, and only those who did so during a specific three-year period. The total number of aliens on the voter rolls is likely to be in the hundreds. This evidence was presented to the U.S. District Court for the District of Kansas in the case of *Kobach, et al., v. Election Assistance Commission* (2014), to demonstrate that merely signing a statement claiming to be a citizen is not enough. The State of Arizona, a co-plaintiff in the lawsuit, undertook a similar, limited study of its voter rolls and found approximately 200 aliens who had registered.

How the President's Executive Actions Exacerbate the Problem

On June 15, 2012, the Obama Administration unlawfully granted deferred action to approximately 1.8 million illegal aliens willing to claim that they entered the United States before the age of 16 (the "DACA Directive"). And on November 20, 2014, the Administration extended the same executive amnesty to another approximately 4 million illegal aliens. I describe these executive actions as "unlawful" because the only two federal courts that have addressed the question both concluded that the President acted in violation of the law. On April 23, 2013, the Northern District of Texas concluded that the DACA Directive compelled ICE officers to violate 8 U.S.C. § 1225(b)(2)(A). *Crane v. Napolitano*, 2013 U.S. Dist. LEXIS 57788. And on December 16, 2014, the Western District of Pennsylvania concluded that the November 20, 2014, Directive was an unconstitutional exercise of legislative power by the executive branch. *United States v. Elionardo Juarez-Escobar*, Criminal No. 14-0180.

The Directives authorize U.S. Citizenship and Immigration Services to issue employment authorization documents to these amnesty recipients. The aliens can then use their employment documents to obtain driver's licenses in any states. Whether or not a particular state will issue driver's licenses to these aliens is a question of state law. In some states, such as Wisconsin, state law compels the department of motor vehicles to issue driver's licenses to all deferred

action recipients. See WIS. STAT. § 343.14(2)(es)(6). In other states, namely those states within the Ninth Circuit (California, Arizona, Nevada, Oregon, Washington, Oregon, Idaho, Montana, Alaska, and Hawaii), a flawed Ninth Circuit holding now compels those states to give driver's licenses to DACA aliens if the state gives driver's licenses to any other deferred action aliens. *Arizona Dream Act Coalition v. Brewer*, 757 F.3d 1053 (9th Cir. 2014). In a dozen other states, the state legislatures are considering bills that would make clear that recipients of this unlawful amnesty are not entitled to driver's licenses in those states.

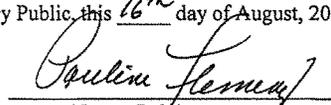
Where a deferred action alien is able to obtain a driver's license, doing so allows the alien to easily satisfy one of the documentation requirements of the Help America Vote Act. However, even if the alien resides in a state that does not provide driver's licenses to such aliens, the alien will still be able to obtain a Social Security Number, another acceptable form of identification. Provided that the alien is willing to sign the application stating that he is a U.S. citizen – something that occurs all the time either because the alien does not understand that he is declaring U.S. citizenship or because the alien is intentionally breaking the law – he will almost certainly become registered in one of the 46 states that do not require proof of citizenship. If the alien registers using the federal voter registration form in Kansas, Arizona, Georgia, or Alabama, he will succeed in registering to vote in federal elections (unless and until the U.S. Supreme Court grants a writ of certiorari to review the Tenth Circuit's holding in *Kobach v. Election Assistance Commission* and reverses the court of appeals).

Based on the empirical evidence that I have seen as the Kansas Secretary of State, it is a certainty that the Administration's executive actions will result in a large number of additional aliens registering to vote throughout the country, in violation of state and federal law. These are irreversible consequences, because *once an alien registers to vote, it is virtually impossible to detect him and remove him from the list of registered voters*. In states like Kansas, we have been working hard to address the problem of aliens illegally voting in our elections. The Administration's actions have set us back in our efforts, increasing the risk of stolen elections and gravely undermining the rule of law.

- 9. The adult male stood over the women while they voted, continually talking to them, and would point at specific things on the ballots, instructing the women how to cast their vote and for whom to vote for.
- 10. He did this to all the voters at the table.


LINDEE HOPKINS

Subscribed and sworn to before me, a Notary Public, this 16th day of August, 2010.


Notary Public

My Commission Expires:
PAULINE FLEMING
Notary Public - Notary Seal
State of Missouri
Commissioned for Clay County
My Commission Expires: November 18, 2010
Commission Number: 06823245

Mr. DESANTIS. The gentleman's time has expired.
The chair now recognizes Mr. von Spakovsky for 5 minutes.

STATEMENT OF THE HONORABLE HANS VON SPAKOVSKY

Mr. VON SPAKOVSKY. Thank you, Mr. Chairman.

The U.S. already has a problem with non-citizens being able to easily register and vote with little chance of detection or even prosecution. There have been numerous such cases from Florida to Virginia to Ohio to California. These ineligible voters could make the difference in a close election. Let me just give you a few examples.

In 2010, a Florida immigration judge issued an order in a removal case for a Cuban citizen who entered Miami in 2004. She voted in the November 2004 election. This was not detected by local election officials; it only came to light because she applied for a change in immigration status. She initially lied about voting, but admitted it after DHS uncovered it in a check of local voter registration records. If she had not tried to change her immigration status, she could have easily continued to vote illegally, without detection.

This is not an isolated case. In 2005, a GAO report said that it found that 3 percent of the 30,000 individuals called for jury duty from voter registration rolls over a 2-year period in just one United States district court were not U.S. citizens. Now, that may not seem like many, but 3 percent of registered voters would have been more than enough to provide the winning margin in Florida in 2000.

In just one 3-year period, from 2002 to 2005, the U.S. Justice Department prosecuted a dozen non-citizens for registering and voting in Florida, including a non-citizen who had been a candidate for the State legislature. These cases were discovered accidentally, not through any systemic review of election records.

The current Justice Department is not interested in enforcing these laws. In 2011, when I was a member of the Fairfax County electoral board in Virginia, we discovered 278 individuals who had registered to vote, despite Virginia DMV records showing they were not U.S. citizens; 117 of them had voted. We provided that information to the Justice Department; no action was taken to investigate or prosecute these cases.

A voter registration card is an easily obtainable document that an illegal alien can use for many different purposes. Federal law requires employers to verify the identity of new employees. The Federal I-9 Form provides a list of documentation that can be used to establish identity, including a voter registration card.

A Federal grand jury in 1984 found large numbers of aliens registered in Chicago. The grand jury reported that aliens "register to vote so they can obtain documents identifying them as U.S. citizens and have used their voter cards to obtain a myriad of benefits, from Social Security to jobs with the Defense Department."

Now, Federal immigration law requires DHS to "respond to any inquiry by a Federal, State, or local government agency seeking to verify or ascertain the citizenship or immigration status of any individual. However, it is only since Florida successfully sued DHS,

in 2012, over its refusal to verify citizenship data for election officials that the Government has finally started working with State election officials and given them limited access to the Systematic Alien Verification for Entitlements, or SAVE, data base.

President Obama's executive action for as many as 5 million aliens will greatly exacerbate this problem just given the sheer numbers of new individuals who will be given quasi-legal status to be present and working in the U.S. These aliens will be given Social Security numbers and will obtain driver's licenses. Thus, it will be easier for them to register to vote illegally, since they will be able to meet the Help America Vote Act's requirement that voter registration applicants provide the last four digits of their Social Security number or their current driver's license. As a result, it will be more difficult for election officials to prevent or detect non-citizens who intentionally or negligently affirm their eligibility to vote and use these new ID documents.

What I would recommend is as follows:

First of all, all Social Security numbers issued to aliens should have the letter N to designate non-citizen at the end of the number so they can easily be identified as non-citizens.

DHS should work with the States to develop a more accessible process or system to verify the citizenship of registrants, especially those who get deferred action.

Congress should investigate why DOJ is not prosecuting registration and voting by non-citizens, which are serious criminal offenses.

They also should investigate whether DHS is granting citizenship or deferred status to aliens who have illegally registered or voted in past elections.

All Federal courts should be required to notify local election officials when individuals are summonsed for jury duty from voter registration rolls are excused because they are not U.S. citizens.

And a voter registration card should not be acceptable as ID on the Federal I-9 Form in States that have not implemented proof of citizenship requirements.

Thanks.

[Prepared Statement of Mr. von Spakovsky follows:]



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LEGISLATIVE TESTIMONY

**THE PRESIDENT'S EXECUTIVE ACTIONS ON
IMMIGRATION AND THEIR IMPACT ON FEDERAL AND
STATE ELECTIONS**

**Testimony before the House of Representatives, Committee on
Oversight and Government Reform, Subcommittee on National
Security and the Subcommittee on Health Care, Benefits, and
Administrative Rules**

February 12, 2015

**Hans A. von Spakovsky
Senior Legal Fellow
The Heritage Foundation**

My Background and Experience:

My name is Hans A. von Spakovsky.¹ I am a Senior Legal Fellow in the Edwin Meese III Center for Legal and Judicial Studies at The Heritage Foundation and Manager of the

¹ The title and affiliation are for identification purposes. The staff of The Heritage Foundation testify as individuals discussing their own independent research. The views expressed here are my own, and do not reflect an institutional position for The Heritage Foundation or its board of trustees, and do not reflect support or opposition for any specific legislation. The Heritage Foundation is a public policy, research, and educational organization recognized as exempt under § 501(c) (3) of the Internal Revenue Code. It is privately supported and receives no funds from government at any level; nor does it perform any government or other contract work. Heritage is also the most broadly supported think tank in the United States, with nearly 700,000 supporters in every state, 78% of whom are individuals, 17% are foundations, and 5% are corporations. The top five corporate givers provide The Heritage

Election Law Reform Initiative. The views I express in this testimony are my own, and should not be construed as representing any official position of The Heritage Foundation.

I spent four years at the Justice Department as a career civil service lawyer, including three years as Counsel to the Assistant Attorney General for Civil Rights, where I helped coordinate the enforcement of federal voting laws. I spent two years as a commissioner at the Federal Election Commission. I served on the Board of Advisors of the U.S. Election Assistance Commission and on the Fulton County (Ga.) Board of Registrations and Elections. I am the former vice chairman of the Fairfax County (Va.) Electoral Board and a former member of the Virginia Advisory Board to the U.S. Commission on Civil Rights.

I am the author of numerous studies and articles on voting, elections, and campaign issues, including as a contributor to the American Bar Association's book on elections, "America Votes! A Guide to Modern Election Law and Voting Rights" (ABA Section of State and Local Government 2012). I am the coauthor with John Fund of "Who's Counting? How Fraudsters and Bureaucrats Put Your Vote At Risk" (Encounter Books 2012).

Summary of Testimony

The U.S. already has a problem with noncitizens being able to easily register and vote in our elections – whether they do so intentionally or not – with little chance of detection or even prosecution when they are detected. There have been numerous such cases around the country, from Florida to Virginia to Ohio to California. Those ineligible voters could make the difference in a close election, and we have many close elections, particularly in local races.

On Nov. 20, President Obama announced his new immigration policy, which is being implemented through a series of directives issued by Jeh Johnson, the Secretary of the Department of Homeland Security. This executive action, which will not only provide "deferred action" for aliens illegally in the United States – no prosecution or enforcement of federal law requiring their removal – but will also provide them with social security numbers and employment authorization documents or work permits. Lawsuits are already ongoing to force states to provide all aliens granted deferred status with driver's licenses, and other states such as Georgia are already granting driver's licenses to such aliens.²

With an estimated five million illegal aliens being granted government identification documents and social security numbers, the problems associated with noncitizens and elections will increase exponentially. When combined with the history of the Department of Homeland Security's prior reluctance to fully cooperate with election officials' attempts to verify the citizenship status of registered voters, it will be extremely difficult for election officials to

Foundation with 2% of its 2011 income. A list of major donors is available from The Heritage Foundation upon request.

² See *Arizona Dream Act Coalition v. Brewer*, Case No. 12-02546 (D.AZ Jan. 22, 2015); Josh McKoon, *Unlike Mexico, Georgia is Issuing Drivers Licenses to Illegal Immigrants*, Townhall (Feb. 10, 2015); Roque Planas, *Connecticut To Issue Driver's Licenses To Undocumented Immigrants Who Qualify For DACA*, Huffington Post (Jan. 7, 2013).

prevent or detect those who intentionally or negligently affirm their eligibility to vote on voter registration forms and vote in local, state and federal elections.

The Current Problem

On Oct. 13, 2010, an immigration judge in Orlando, Florida, issued an order in a removal case involving Anailin Reyes.³ She is a Cuban citizen who entered the U.S. in Miami on April 26, 2004. Four months after she arrived she registered to vote and voted in the November 2004 election. Reyes's aunt, Jobitza Soto, a U.S. citizen, told the court that Soto, Reyes, and Reyes' mother (who was also a Cuban citizen) were approached by a woman outside the Duval County Courthouse who was part of a third party organization holding a registration drive. Soto claimed that she told the woman that her two companions were not U.S. citizens, but that the woman told her that "noncitizens could legally vote." So Soto filled out voter registration forms for all three of them.

The fact that Reyes and her mother were not U.S. citizens and therefore not entitled to vote was not detected by local Duval County election officials and Soto was unable to identify which third party organization prompted her, and presumably other noncitizens, to register and vote. This only came to light when Reyes applied for a change in her immigration status. During that process she initially lied to the Department of Homeland Security about registering and voting, but admitted it after "seeing evidence to the contrary" uncovered by DHS from a check of local voter registration records.

If she had not tried to change her immigration status, Reyes could have easily continued to vote illegally and without detection – as too many noncitizens (both legal and illegal) do in elections all over the country. Unfortunately for the interests of election integrity, the immigration judge in the proceeding, Rafael B. Ortiz-Segura, refused to do anything about Reyes's violation of federal and state law because he blamed election officials for mistakenly approving her registration in the first place.⁴

This is not an isolated case. Noncitizens are on voter registration lists all over the country. In 2005, the U.S. Government Accountability Office found that up to 3 percent of the 30,000 individuals called for jury duty from voter registration rolls over a two-year period in just one U.S. district court were not U.S. citizens.⁵ While that may not seem like many, just 3 percent of registered voters would have been more than enough to provide the winning presidential vote margin in Florida in 2000.

It is estimated that there are over a million illegal aliens in Florida. In 2012, a local NBC station found at least 100 individuals in just one Florida county who had been excused from jury duty because they were not U.S. citizens but who were registered to vote.⁶ One Coral Gables

³ *In the Matter of Anailin Reyes*, A 097-952-267, U.S. Dept. of Justice, Executive Office for Immigration Review, Immigration Court, Orlando, Florida.

⁴ *In the Matter of Anailin Reyes*.

⁵ Gov't Accountability Office, *Elections: Additional Data Could Help State and Local Election Officials Maintain Accurate Voter Registration Lists* 42 (2005).

⁶ Andy Pierrotti, *NBC Investigates: Voter Fraud* (Feb. 2, 2012), available at www.nbc-2/story/16662854/2012/02/02/nbc2-investigates-voter-fraud?clienttype=printable.

resident, Hinako Dennett, who is not a citizen, told the NBC reporter that she votes “every year.” A Naples resident, Yvonne Wigglesworth, who is also not a citizen, claimed she did not know how she had been registered but records showed she had voted in six different elections over the past eleven years.

In just one three-year period from October 2002 to September 2005, the U.S. Department of Justice prosecuted a dozen noncitizens for registering or voting in elections beginning in 1998 all over Florida, including in Broward, Miami-Dade, St. Lucie, Martin and Palm Beach Counties.⁷ The Justice Department even prosecuted a noncitizen, Rafael Velasquez, who had not only voted illegally, but also had been a candidate for the Florida legislature.⁸ These cases were discovered accidentally – not through any systematic review of election records.

The current Justice Department is not interested in prosecuting such cases and enforcing federal laws that make it a crime for noncitizens to register and vote.⁹ In 2011, when I was still on the Fairfax County Electoral Board in Virginia, we discovered 278 individuals who had registered to vote despite telling the Virginia Department of Motor Vehicles that they were not U.S. citizens. 117 of those noncitizens had “a history of voting in Virginia.”¹⁰ We provided that information to both the U.S. Attorney for the Eastern District of Virginia and the Public Integrity Section of the Justice Department. No action was taken to either investigate or prosecute these cases.

In fact, such violations of federal law by noncitizens are not even likely to prevent them from becoming citizens. This was demonstrated in 2010 in Tennessee when Putnam County election administrator Debbie Steidl revealed that she had been given a form letter sent by DHS to an immigrant seeking to become a citizen telling him to submit evidence that he had “been removed from the roll of registered voters.” The Obama administration seemed uninterested in the fact that the noncitizen had actually voted illegally in the 2004 election.¹¹

A study by several professors at Old Dominion University and George Mason University released in 2014 estimated that 6.4% of noncitizens voted in 2008 and 2.2% voted in 2010.¹² This estimate was based on the Cooperative Congressional Election Studies survey that surveyed 32,800 individuals in 2008 and 55,400 in 2010. There has been much dispute over the validity of these estimates, including claims by some that the sampling estimate was too small, something the authors dispute.¹³

⁷ Crim. Div., Pub. Integrity Section, U.S. Dep’t of Just., *Election Fraud Prosecutions & Convictions: October 2002-September 2005* (2006). DOJ also prosecuted noncitizens for registering and voting in Alaska, Colorado, and North Carolina.

⁸ U.S. v. Velsquez, Case No. 03-CR-20233 (So. D. Fla 2003).

⁹ See 18 U.S.C. §611, 18 U.S.C. §1015(f), and 18 U.S.C. §911.

¹⁰ Letter of August 19, 2011, from Edgardo Cortes, General Registrar, Fairfax County, Virginia, to Neil H. MacBride, U.S. Attorney for the Eastern District of Virginia, and to Jack Smith, Chief of the Public Integrity Section, U.S. Department of Justice.

¹¹ *Immigrant Who Voted Illegally on Road to Becoming a U.S. Citizen*, FOX News, August 26, 2010.

¹² Jesse T. Richman, Gulshan A. Chattha, and David C. Earnest, *Do noncitizens vote in U.S. elections?* Electoral Studies 36 (2014) 149-157.

¹³ Jesse Richman and David Earnest, *Do noncitizens vote in U.S. elections? A reply to our critics*, Washington Post (Nov. 2, 2014).

But whatever the extent of the problem, the evidence is indisputable that aliens, both legal and illegal, are registering and voting in federal, state, and local elections. Following a mayor's race in Compton, California, for example, aliens testified under oath in court that they voted in the election.¹⁴ In that case, a candidate who was elected to the city council was permanently disqualified from holding public office in California for soliciting noncitizens to register and vote.¹⁵ The fact that noncitizens registered and voted in the election would never have been discovered except that the incumbent mayor, who lost by less than 300 votes, contested the election.

Similarly, a 1996 congressional race in California was clearly affected by illegal noncitizen voting. Republican incumbent Bob Dornan was beaten by his Democratic challenger Loretta Sanchez. Congresswoman Sanchez won the election by just 979 votes, and Dornan contested the election in the U.S. House of Representatives. His challenge was dismissed after an investigation by this Committee discovered 624 invalid votes by noncitizens who were present in the U.S. Immigration and Naturalization Service (INS) database, as well as another 124 improper absentee ballots.¹⁶ The Committee found "circumstantial" evidence of another 196 noncitizens voting, but the Committee did not include the 196 in its tally of invalid votes.

Although the election was not overturned, this Committee found that hundreds of votes had been cast illegally by noncitizens in just *one* congressional race. And the investigation could not detect *illegal* aliens who were not in the INS records. To my knowledge, neither the Justice Department nor California prosecutors ever prosecuted a single one of the noncitizens who illegally voted in that close contest.

Some claim that illegal aliens do not register in order "to stay below the radar" and because "committing a felony for no personal gain is not a wise choice."¹⁷ But there are many noncitizens who don't seem to understand that they are not entitled to voter and for others the potential benefit of registering can outweigh the chances of being caught and prosecuted. That is unfortunately true since most states have no measures in place to verify citizenship and even when caught, many district attorneys will not prosecute what they see as a "victimless and non-violent" crime.¹⁸

On the benefit side of the equation, a voter registration card is an easily obtainable document, routinely issued without checking identification, that an illegal alien can use for many different purposes, including obtaining a driver's license, qualifying for a job, and even

¹⁴ Daren Briscoe, *Noncitizens Testify They Voted in Compton Elections*, L.A. Times (Jan. 23, 2002), at B5.

¹⁵ A judge's removal of the mayor from office was later overturned, but the removal of a councilwoman who participated in noncitizen voter fraud was upheld. See *Bradley v. Perrodin*, 106 Cal. App. 4th 1153 (2003), *review denied*, 2003 Cal. LEXIS 3586 (Cal. 2003); Robert Greene, *Court of Appeal Upholds Perrodin Victory Over Bradley in Compton*, Metro News-Enter., March 11, 2003; Daren Briscoe, Bob Pool & Nancy Wride, *Judge Voids Compton Vote, Reinstalls Defeated Mayor*, L.A. Times, Feb. 9, 2002.

¹⁶ See H.R. Doc. No. 105-416 (1998).

¹⁷ Jessica Rocha, *Voter Rolls Risky for Aliens: Noncitizens' Registering Is a Crime; 4 Cases Turn up in N.C.*, News & Observer (Dec. 7, 2006).

¹⁸ Gov't Accountability Office, *Elections: Additional Data Could Help State and Local Election Officials Maintain Accurate Voter Registration Lists* 60.

voting.¹⁹ The Immigration Reform and Control Act of 1986, for example, requires employers to verify that all newly-hired employees present documentation verifying their identity and legal authorization to work in the United States.²⁰ The federal I-9 form that employers must complete for all new employees provides a list of documentation that can be used to establish identity – including a voter registration card.

How aliens view the importance of this benefit was illustrated by the work of a federal grand jury in 1984 that found large numbers of aliens registered to vote in Chicago. As the grand jury reported, many aliens "register to vote so that they can obtain documents identifying them as U.S. citizens" and have "used their voters' cards to obtain a myriad of benefits, from social security to jobs with the Defense Department."²¹

The grand jury's report resulted in a limited cleanup of the voter registration rolls in Chicago, but just one year later, INS District Director A. D. Moyer testified before a state legislative task force that 25,000 illegal and 40,000 legal aliens remained on the voter rolls in Chicago. Moyer told the Illinois Senate that noncitizens registered so they could get a voter registration card for identification, adding that the card was "a quick ticket into the unemployment compensation system."²² An alien from Belize, for example, testified that he and his two sisters were able to register easily because they were not asked for any identification or proof of citizenship and lied about where they were born. After securing registration, he voted in Chicago.

Once aliens are registered, of course, they receive the same encouragement to vote from campaigns' and parties' get-out-the-vote programs and advertisements that all other registered voters receive. Political actors have no way to distinguish between individuals who are properly registered and noncitizens who are illegally registered.

Some dismiss reported cases of noncitizen voting as unimportant because, they claim, there are no cases in which noncitizens "intentionally" registered to vote or voted "while knowing that they were ineligible."²³ Even if this latter claim were true – which it is not – every vote cast by a noncitizen, whether an illegal alien or a resident alien legally in the country, dilutes or cancels the vote of a citizen, effectively disenfranchising that citizen. To dismiss such nullified votes because the noncitizens supposedly did not know they were acting illegally debases one of the most important rights of citizens.

Obtaining an accurate assessment of the size of this problem is difficult. There is no systematic review of voter registration rolls by most states to find noncitizens, and the relevant federal agencies – in direct violation of federal law – have either refused to cooperate with those few state election officials who seek to verify the citizenship status of registered voters or put up burdensome red tape to make such verification difficult. Federal immigration law requires these

¹⁹ In a typical example, voter registration cards are listed as an acceptable secondary source document to prove Maryland residency when obtaining a driver's license in Maryland. See Maryland Motor Vehicle Administration, Sources of Proof, <http://www.marylandmva.com/DriverServ/Apply/proof.htm>.

²⁰ 8 U.S.C. § 1324a (2008).

²¹ See In Re Report of the Special January 1982 Grand Jury 1, No. 82 GJ 1909 (N.D. Ill. Dec. 14, 1984), at 8-9.

²² Desiree F. Hicks, *Foreigners Landing on Voter Rolls*, Chi. Trib. (Oct. 2, 1985).

²³ Justin Levitt, Brennan Ctr. for Justice, *The Truth About Voter Fraud 18* (2007).

agencies to "respond to an inquiry by a Federal, State, or local government agency, seeking to verify or ascertain the citizenship or Immigration status of any individual within the jurisdiction of the agency for any purpose authorized by law, by providing the requested verification or status information," regardless of any other provision of federal law, such as the Privacy Act.²⁴

Examples of the Department of Homeland Security's intransigence include the following:

- Florida was forced to sue DHS in 2012 because the department refused to provide citizenship verification information for registered voters as required by federal law.²⁵
- In declining to cooperate with a request by Maryland in 2004 to check the citizenship status of individuals registered to vote there, a spokesman for the U.S. Citizenship and Immigration Service (CIS) mistakenly declared that the agency could not release that information because "it is important to safeguard the confidentiality of each legal immigrant, especially in light of the federal Privacy Act and the Immigration and Nationality Act."²⁶
- In 2005, Washington's Secretary of State Sam Reed asked the CIS to check the immigration status of registered voters in Washington; the agency refused to cooperate.²⁷
- In 1997, the FBI and the U.S. Attorney's office in Dallas were investigating voting by noncitizens. The investigation was started when a random check by local INS agents found 10 noncitizens who had voted in just one 400-person precinct, but the criminal investigation was turned over to local prosecutors. They sent a computerized tape of the names of individuals who had voted to the INS requesting a check against INS records, but the INS refused to cooperate with the criminal investigation.²⁸ An INS official was quoted as saying that the INS bureaucracy did not "want to open a Pandora's Box.... If word got out that this is a substantial problem, it could tie up all sorts of manpower. There might be a few thousand [illegal voters] in Dallas, for example, but there could be tens of thousands in places like New York, Chicago or Miami."²⁹

These incidents show that the CIS and U.S. Immigration and Customs Enforcement (ICE) (the successor agencies to the INS within the Department of Homeland Security), were either

²⁴ 8 U.S.C. §1373.

²⁵ See Florida Department of State v. U.S. Department of Homeland Security, Case No. 1:12-00960 (D. D.C. June 11, 2012)

²⁶ Robert Redding, *Purging Illegal Aliens from Voter Rolls Not Easy; Maryland Thwarted in Tries So Far*, Wash. Times, Aug. 23, 2004.

²⁷ See Letter of March 22, 2005, from Sam Reed to Robert S. Coleman, Director, Seattle District Office, USCIS (Mar. 22, 2005).

²⁸ *INS Hampers Probe of Voting by Foreigners, Prosecutor Says*, Houston Chron. (Sept. 20, 1997). See Frank Trejo, *Internal Strife Embroils Dallas INS Office-Local Agents' Whistle-Blowing Leads to Far-Flung Controversy*, Dallas Morning News (March 8, 1998); Dena Bunis, *Dallas INS' Probe of Electorate Echoes Here: Fallout from the Dornan-Sanchez Inquiry Sparks an Internal INS Debate Over a Texas Computer-Match Investigation*, Orange County Reg. (June 5, 1997).

²⁹ Ruth Larson, *Voter-Fraud Probe in Dallas Runs into INS Roadblock: Agency Denies It Should Have Further Aided U.S. Attorney*, Wash. Times (Sept. 25, 1997).

ignorant of federal legal requirements or deliberately ignoring them. An inquiry by a state or local election official regarding voter eligibility based on citizenship falls squarely within their statutory authority. It is only since Florida filed its successful lawsuit against DHS that the department has finally started working with state officials³⁰ to give them limited access to the Systematic Alien Verification for Entitlements (SAVE)³¹ database for citizenship verification. But this system is apparently slow and cumbersome and DHS needs to work with the states to develop a more accessible process or system to verify the citizenship of registrants.

To be sure, CIS and ICE databases are not comprehensive; they contain information only about legal immigrants who have applied for the documentation necessary to be in the United States and illegal immigrants who have been detained. With President Obama's executive action on immigration, however, they will now also contain information on the millions of illegal aliens who apply for deferred status. Access to that information will be crucial for election officials in their attempts to clean up registration lists and find aliens who are illegally registered and voting in elections. However, there is not yet any indication that the Obama administration will provide state election officials access to information on those aliens granted deferred status.

The past obstinacy of federal agencies over complying with the law compelled local election officials to rely almost entirely on the "honor system" to keep noncitizens from the polls. As Maryland's state election administrator has complained, "There is no way of checking.... We have no access to any information about who is in the United States legally or otherwise."³² Most discoveries of noncitizens on the registration rolls are therefore accidental.

But it continues to happen. The former Colorado Secretary of State testified before Congress in 2011 that a check of the voter registration rolls against state DMV records found many noncitizens had registered and voted.³³ New Mexico Secretary of State Dianna Duran reported that a preliminary check of voter registration rolls had already found 37 noncitizens who had voted in New Mexico elections.³⁴

In 2006, Paul Bettencourt, the former Voter Registrar for Harris County, Texas, testified before the U.S. Committee on House Administration that the extent of illegal voting by foreign citizens in Harris County was impossible to determine but "that it has and will continue to occur." Twenty-two percent of county residents, he explained, were born outside of the United States, and more than 500,000 were noncitizens. Bettencourt noted that he cancelled the registration of a Brazilian citizen in 1996 after she acknowledged on a jury summons that she was not a U.S. citizen. Despite that cancellation, however, "[s]he then reapplied in 1997, again

³⁰ Tom Curry, *Election official could be pivotal in battleground Colorado*, NBC News (Jul. 27, 2012).

³¹ See <http://www.uscis.gov/about-us/about-save-program>.

³² Christina Bellantoni, *Little to Stop Illegal Aliens from Voting*, Wash. Times (Sept. 24, 2004), at A1.

³³ The 2010 Election: A Look Back at What Went Right and Wrong Before the Comm. On House Administration, 112th Cong. (2011) (Statement of Colorado Secretary of State Scott Gessler).

³⁴ Milan Simonich, *Secretary of State Says Voter Fraud Probably Uncovered*, Alamogordo Daily News (March 15, 2011).

claiming to be a U.S. citizen, and was again given a voter card, which was again cancelled. Records show she was able to vote at least four times in general and primary elections."³⁵

In 2005, Bettencourt's office turned up at least 35 cases in which foreign nationals applied for or received voter cards, and he pointed out that Harris County regularly had "elections decided by one, two, or just a handful of votes." In fact, a Norwegian citizen was discovered to have voted in a state legislative race in Harris County that was decided by only 33 votes.³⁶

As the story by the local NBC station in Florida demonstrated, some noncitizen registrations can be detected through the jury process. The vast majority of state and federal courts draw their jury pools from voter registration lists, and the jury questionnaires used by court clerks ask potential jurors whether they are U.S. citizens. In most states, however, and throughout the federal court system, court clerks rarely notify local election officials that potential jurors have sworn under oath that they are not U.S. citizens.

In jurisdictions that share that information, election officials routinely discover noncitizens on the voter rolls. For example, the former district attorney in Maricopa County, Arizona, testified that after receiving a list of potential jurors who admitted they were not citizens, he indicted 10 who had registered to vote. (All had sworn on their registration forms that they were U.S. citizens.) Four had actually voted in elections.³⁷

The county recorder in Maricopa County also received inquiries from aliens seeking verification, for their citizenship applications, that they had not registered or voted. Thirty-seven of those aliens had registered to vote, and 15 of them had actually voted. As the county's district attorney explained, these numbers come "from a relatively small universe of individuals - legal immigrants who seek to become citizens.... These numbers do not tell us how many illegal immigrants have registered and voted." Even these small numbers, though, could have been enough to sway an election. A 2004 Arizona primary election, explained the district attorney, was determined by just 13 votes. Clearly, noncitizens who illegally registered and voted in Maricopa County could have determined the outcome of the election.

These numbers become more alarming when one considers that only a very small percentage of registered voters are called for jury duty in most jurisdictions. The California Secretary of State reported in 1998 that 2,000 to 3,000 of the individuals summoned for jury duty in Orange County each month claimed an exemption from jury service because they were not U.S. citizens, and 85 percent to 90 percent of those individuals were summoned from the voter registration list, rather than Department of Motor Vehicles (DMV) records.³⁸ While some of

³⁵ *Noncitizen Voting and ID Requirements in U.S. Elections: Hearing Before the Committee on House Administration*, 109th Cong. (2006) (statement of Paul Bettencourt, Harris County Tax Assessor-Collector and Voter Registrar).

³⁶ Joe Stinebaker, *Loophole Lets Foreigners Illegally Vote: 'Honor System' in Applying Means the County Can't Easily Track Fraud*, *Houston Chron.* (Jan. 16, 2005).

³⁷ *Securing the Vote: Arizona: Hearing Before the Committee on House Administration*, 109th Cong. (2006) (statement of Andrew P. Thomas, Maricopa County District Attorney); see also Transcript of Southwest Conference on Illegal Immigration, Border Security and Crime (May 16, 2006).

³⁸ Press Release, California Sec'y of State, Official Status Report on Orange County Voter Fraud Investigation (Feb. 3, 1998).

those individuals may have simply committed perjury to avoid jury service, this represents a significant number of potentially illegal voters: 24,000 to 36,000 noncitizens summoned from the voter registration list over a one-year period.

Utah, which issues driver's licenses to illegal aliens (as do a number of other states), switched to a two-tiered system that issues a visibly different "driving privilege" card to illegal aliens after a limited 2005 audit by the state's Legislative Auditor General. The audit found that hundreds of illegal aliens had registered to vote when they obtained their Utah driver's licenses and at least 14 of them had voted.³⁹ The audit used a small sample; Utah State Senator Mark Madsen said that an extrapolation of the audit numbers suggested that 5,000 to 7,000 aliens were registered to vote.⁴⁰

President Obama's Executive Action on Immigration

On Nov. 20, President Obama announced his new immigration policy, which is being implemented through 10 directives issued by Jeh Johnson, the Secretary of the Department of Homeland Security. This executive action will provide "deferred action" for certain aliens illegally in the United States, which Johnson defines as deferring "the removal of an undocumented immigrant for a period of time."⁴¹ This means no prosecution or enforcement of federal law requiring the removal and deportation of illegal aliens. The Social Security Administration and DHS will also provide them with social security numbers and employment authorization documents or work permits for three years, which can be renewed. Lawsuits are already ongoing to force states to provide all aliens granted deferred status with driver's licenses, while a number of states have already voluntarily implemented such a policy.⁴²

It is estimated that up to five million aliens who are here illegally may be granted deferred status,⁴³ along with government identification documents and social security numbers. This will greatly exacerbate the problems associated with noncitizens and elections just given the sheer numbers of new individuals who will be given a quasi-legal status to be present – and working – in the United States.

Additionally, these aliens will also be given social security numbers and will eventually be able to obtain driver's licenses as states change their policies voluntarily or are forced to through litigation. Thus, it will be easier for these aliens to register to vote illegally since they

³⁹ Off. of the Legis. Auditor Gen., State of Utah, ILR 2005-B (Feb. 8, 2005); Deborah Bulkeley, *State Says 14 Illegals May Have Cast Ballots*, Deseret Morning News (Aug. 8, 2005). At least 20 of the registered voters were under deportation orders.

⁴⁰ *Bill Would Change Voter Registration Rolls*, Associated Press (Feb. 7, 2006).

⁴¹ Memorandum from Jeh Johnson, "Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children and with Respect to Certain Individuals Whose Parents are U.S. Citizens or Permanent Residents," U.S. Department of Homeland Security (Nov. 20, 2014).

⁴² See *Arizona Dream Act Coalition v. Brewer*, Case No. 12-02546 (D.AZ Jan. 22, 2015).

⁴³ *Obama's Immigration Plan Could Affect Millions*, New York Times (Nov. 15, 2014), at http://www.nytimes.com/interactive/2014/11/15/us/politics/obama-immigration-plan-could-affect-millions.html?_r=0.

will be able to meet the Help America Vote Act of 2002 requirement⁴⁴ that mail voter registration applicants provide the last four digits of their social security number or their current driver's license number.

As a result, it may be extremely difficult for election officials to prevent or detect those noncitizens who intentionally or negligently affirm their eligibility to vote on voter registration forms and vote in local, state and federal elections using their newly-obtained identification documents.

Recommendations

There are several changes that states and the federal government can and should make to prevent noncitizens from registering and voting illegally in state and federal elections:

- Congress and state legislatures should require all federal and state courts to notify local election officials when individuals summoned for jury duty from voter registration rolls are excused because they are not United States citizens. United States Attorneys are already under a similar obligation for felons: Under the NVRA, they must send information on felony convictions to local election officials so that the felons can be removed from voter registration rolls.⁴⁵
- All states should require anyone who registers to vote to provide proof of U.S. citizenship and Congress should make it clear that federal law does not prohibit such a requirement.
- All social security numbers issued to aliens should have the letter "N" (to designate a noncitizen) at the end of the number so they can easily be identified by government officials as noncitizens.
- Although the Department of Homeland Security has finally started complying with federal law and is working with some states to verify the citizenship status of registered voters through the use of the SAVE system, it is apparently a slow and cumbersome process. DHS should work with the states to develop a more accessible process or system to verify the citizenship of registrants.
- Congress should investigate why the Justice Department is not prosecuting registration and voting by noncitizens, which are serious offenses against the basic principles of our democratic system.
- Congress should investigate whether DHS is granting citizenship or deferred status to aliens who have illegally registered or voted in past elections. Such aliens should not be eligible for citizenship or deferred status. They should be referred to the Justice Department for

⁴⁴ 42 U.S.C. §15483.

⁴⁵ 42 U.S.C. § 1973gg-6(g).

prosecution and removal, as well as to the relevant state election officials so that they can be struck from the registration rolls.

- A voter registration card should not be accepted as a valid identifying document to obtain a driver's license or for identification under federal employment rules unless states have implemented proof-of-citizenship requirements for voter registration.

Conclusion

America has always been a nation of immigrants, and we remain today the most welcoming nation in the world. Newly-minted citizens assimilate and become part of the American culture very quickly. Requiring that our laws – *all* of our laws – be complied with requires no more of an alien than it does of a citizen. It is a violation of both state and federal law for immigrants who are not citizens to vote in state and federal elections. These violations effectively disenfranchise legitimate voters whose votes are diluted, and they must be curtailed and punished.

Election officials have an obligation not only to enforce the law, but also to implement registration and election procedures that do not allow those laws to be bypassed or ignored. The federal government has an obligation to assist election officials in maintaining the security of our election process, and that requires giving states immediate and complete access to all DHS records on noncitizens.

Anything less encourages contempt for the law and our election process. Lax enforcement of election laws permits individuals who have not entered the American social compact or made a commitment to the U.S. Constitution, U.S. laws, and the U.S. cultural and political heritage to participate in elections and potentially change the outcome of closely contested races that affect how all Americans are governed.

Mr. DESANTIS. The gentleman's time has expired.
The chair now recognizes Secretary Dunlap for 5 minutes.

STATEMENT OF THE HONORABLE MATTHEW DUNLAP

Mr. DUNLAP. Thank you, Mr. Chairman, distinguished members of the committee. My name is Matt Dunlap. I live in Old Town, Maine, and I am Maine's Secretary of State, and I thank you for the opportunity to sit with you today and talk a little bit about the aspects of voter registration and some of the supporting documents that we utilize to ensure the integrity of that process.

I am also the chief motor vehicle official for the State of Maine, so we issue about a million driver's licenses, and that process has changed significantly over the last 10, 15 years, and I will speak to that quite briefly.

I am quite pleased to tell you that in the State of Maine, at least, registering to vote, along with every other aspect of the elections process, is highly accessible to qualified citizens and is quite secure. In order to register to vote, you fill out the registration card, you have to present a photo identification or non-photo government official documentation, provide an official document that shows proof of your residency; and we allow for election day registration, no-excuse absentee balloting. We had strong systems in the military and overseas voter empowerment act. We have a number of provisions in the law that open the doors to voters to come and participate in our process.

In the 10 years that I have been Secretary of State, we have sent two cases of misuse of a ballot to the attorney general for prosecution. Now, I think it is important for me to note here, in the discussion that is centered today around the prospect of voter fraud, that no amount of fraud is acceptable.

Nonetheless, it is extraordinarily rare, so what we talk about in the context of voter access is the importance of having integrity in the process, but also access. People need to know that that system belongs to them and that they can trust it. So the processes that we have in place, including a series of sworn Statements that people take an oath to, works quite well and is well policed by local elections officials.

The consequences for violating Maine election law are fairly precipitous. In fact, under one of the very first sections of Title 21-A in the Maine revised statutes, it says a person is guilty of a crime if they knowingly violate a provision of this title for which no penalty has already been provided. So the message there is don't even think about it. And for people who are non-immigrant aliens, the consequences for attempting to register to vote or vote are even more precipitous. After they serve a prison sentence, they are deported and can no longer seek admission as a citizen to our Country.

Now, assuming that they get that far, it is also important to know that the documents that they have access to are heavily described in law to prevent misuse of those documents, including the driver's license. It used to be all you had to do was pass the eye test, written test, and road test. But now you also have to provide proof of citizenship or legal presence in this Country. If you are eligible for a Social Security number, you must provide it to us. And

these things have done an awful lot to make the credentials more secure, but also less convenient to obtain for our citizens.

In terms of the work that we do on voter registration and driver's license issuance, it is important for me to note, in looking over the executive orders, that the executive orders really change nothing in how we do our work. The protections in our systems remain, they are uncompromised, and, at least in the State of Maine, they work pretty well.

What I have experienced as the chief motor vehicle officer in the State of Maine is that, actually, a lot of the new requirements I just described, which run parallel to requirements for compliance to the Real ID Act of 2005, do create profound hardships for American citizens trying to comply, and we spend a lot of time in our exceptions process trying to make sure people can comply with the law.

As an administrator, you have to treat everybody the same. It is easy to isolate people and call them potential terrorists or illegal aliens using systems that the Federal Government has very neatly exempted itself from participating in, but when you have people who are born in Canada, who are American citizens, trying to prove that they are Americans can be a troubling process for them; and we spend a lot of time trying to help American citizens comply with our laws.

We have never had an experience as described by my colleagues, with undocumented aliens trying to throw our elections. My experience is they don't come here to vote and they don't come here to drive; they come here to find a better life; and the changes in immigration law which make it very difficult for them to pursue that is occupied entirely by the Federal Government. That field is yours, and yours alone. It is our job to try to help citizens comply with the law.

I will try to answer any questions at the pleasure of the chair that come from this committee, sir.

[Prepared Statement of Mr. Dunlap follows:]



STATE OF MAINE
OFFICE
OF THE
SECRETARY OF STATE

**Testimony of Maine Secretary of State Matthew Dunlap
to the
Subcommittee on National Security
and the
Subcommittee on Health Care, Benefits, and Administrative Rules**

February 12, 2015

Mr. Chairman and distinguished members of the committee; my name is Matt Dunlap from Old Town, Maine. I carry the honor of serving as Maine's Secretary of State, and in that role I serve as our state's chief election officer as well as chief motor vehicle official.

The context of the discussion today revolves around how we register voters, and what impact the President's executive orders on immigration will have on that process. I'm pleased to report that the process for registering to vote in Maine is, along with every other aspect of the elections process, highly accessible to qualified citizens, and is very secure.

These two aspects are paramount to the public legitimacy of the process. Citizens deserve to believe that the process belongs to them, and that they can trust it. The custody of the elections process is a sacred charge, and the processes and systems employed are time-honored in their effectiveness and accountability.

I can only speak with fluency on our processes in the State of Maine, but they are not structured outside the norm in comparison to other states and commonwealths in America.

In Maine, when a qualified elector reaches majority, they are eligible to register and participate in Maine elections for all municipal, county, state, and Federal elections. All qualified voters must be 18 years of age; in Maine, election law allows the voter registration of 17-year olds to participate in party nomination primaries if they will be 18 by the time the general election is scheduled to occur. Voter registration itself is a simple process.

In order to register, a prospective voter must complete a voter registration card with their name, address, date of birth, party affiliation if any, and citizenship status. They will also include information about their driver's license number or the last four digits of their Social Security Number (SSN) as part of the form. When applying, prospective voters must also present a government-issued photographic identification document or non-photographic identification, or other forms of official documents and

official correspondence indicating their physical residence to the Registrar of Voters in the municipality where they live.

That information is entered into the Central Voter Registration (CVR) database by the municipal registrar.

Maine also offers Election Day Registration (EDR) to voters, so that they may register or update their registrations at any time up to and including Election Day. If a voter arrives at the polls intending to vote, but lacks the necessary documents, they are still allowed to participate by being assigned a challenged ballot. The challenged ballot is employed when a prospective voter lacks proper identification and/or residency documents; the ballot is assigned a secret number, and in the event of a recount challenge to the election, the ballots with secret numbers are segregated, the due diligence about the eligibility of voters conducted at that time, and once complete, either resubmitted in the recount or not. If there is no recount, then any voter who has cast a challenged ballot is followed up with after the election to complete the formal registration process. This process is not used commonly, but it is a good tool to ensure the integrity of voter access to the ballot.

Further, Maine offers by-request absentee balloting in all county, state and Federal elections. Sometimes this is called "No-Reason" or "No-Excuse" absentee balloting. This is available to voters until two business days before the election.

For citizens with disabilities, we have available in every polling station the IVS telephone voting solution that provides secure and private access to our election ballots. While deployed for people with disabilities, it is available to all voters to use if they wish.

Finally, our implementation of the Military and Overseas Voter Empowerment Act (MOVE) and the Uniformed and Overseas Citizen Absentee Voting Act (UOCAVA) avails to all of our citizens access to our elections in an efficient, secure, and timely manner.

Taken together, these vectors allow Maine voters to access elections at a turnout rate that is among the highest in the nation. Indeed, in 2014, over sixty percent of voter-age eligible voters cast ballots in Maine's general election, which led the nation. Despite the relative ease with which our citizens can access the elections process, there has never been a question as to the integrity of our processes, and allegations of wrongdoing are so rare as to be virtually non-existent. In the ten years I have served as secretary of state, we have only forwarded two cases of misuse of a ballot to the Attorney General for investigation and prosecution.

It is important to note that in the President's executive orders that are designed to bring people who have come to this country outside of the administrative processes established by Congress out of the shadows, no aspect of state or Federal election law has been changed.

The concern that undocumented aliens will now take advantage of potential access to the Social Security system and to driver's licenses in order to unhinge the integrity of our elections systems is, I believe, completely without basis. Given that our systems are not now abused because of the barriers in

place to prevent fraud—and please, do not discount the ability of local elections officials to detect suspicious behavior—there really is no argument that I can discern that would follow that someone who is now ineligible to vote and ineligible to obtain a Social Security number or driver’s license would throw their fortunes to the wind, and vote illegally just as they were finding a path to prosperity by coming out of the shadows. Because rest assured—we would catch them.

While no system is perfect or foolproof, there are plenty of safeguards in the process. In Maine, the penalties for willfully violating election law are precipitous; most violations are treated as felonies. In fact, under MRSA Title 21-A §32 sub-paragraph A, a person is guilty of a crime if they “knowingly violate a provision of this Title for which no penalty has been provided.” The message? Don’t even think about it. For non-immigrant aliens, the potential consequences are even steeper, including deportation (after serving a prison sentence) and exclusion from admission as a citizen.

That’s assuming they get that far. The Maine Department of the Secretary of State also is home to the Maine Bureau of Motor Vehicles, where we license over a million drivers in our state. In order to obtain a Maine driver’s license, you must pass an eye exam, a written test, and a road test; and to obtain the basic Class C credential, operators must provide proof of citizenship or legal presence, proof of residency, and if eligible, they must provide our department with their Social Security number prior to processing their license. The same process follows for an identification card.

It wasn’t always this way. Getting a Maine license, or a license anywhere, was pretty much as simple as passing the tests. Photo ID’s were adopted in the 1980’s to prevent underage folks from using an older sibling’s or friend’s driver’s license to acquire alcohol. When we began asking for proof of identity, we accepted any official document, including expired passports. Birth certificates were a common document, and still are, but the difference now is that there is a secure process in Maine to obtain a certified copy of a birth certificate—no longer can you simply go to a county seat or to Vital Records and get a copy of anyone’s birth certificate. This new protocol protects the identities of our citizens and the integrity of these other processes. We began obtaining SSN’s in the 1990’s to facilitate the collection of back-child support payments, and later included aliens who were eligible for SSN’s in the wake of the terrorist attacks of 2001.

The undocumented alien is a shadowy figure. When we talk about security of our driver’s license and election systems, suspicion is immediately aroused when the discussion turns to undocumented aliens. “They’ve already broken the law by sneaking into the country,” the charge lays. “How can you trust them to obey these other statutes?”

It’s a fair question, but not all undocumented aliens sneak into the country. Some come here as small children with their families, and go through life *believing* they are Americans until they need paperwork. In many cases, the lack of documentation of an undocumented alien is mirrored in the lack of documentation possessed by American citizens. For many of our citizens, their documentation has been lost or destroyed, and we have to engage in an elaborate exceptions process to assist them. We spend an inordinate amount of time assisting natural-born Americans in complying with these laws.

A common example of this type of work is found in northern Maine, which is still largely farm country. In some areas the border with Canada runs through people's homes, down the middle of streets, and through back yards. It has been very common for expectant mothers to hie to nearest hospital when the blessed moment arrived—and the nearest hospital, in many cases, was in Canada. That's not an issue until the child reaches an age where they need proof of citizenship, and it's made complicated by the fact that their birth certificate is from New Brunswick.

We go through these episodes of customer service for both citizens *and* non-citizens because their chief aim is to comply with the law.

During the debate over the deeply flawed REAL ID Act of 2005 (which, by the way, was supposed to have been implemented fully by 2008, and has been deferred by the Department of Homeland Security yet again), the two goals of the Act were to arrest access to official state-issued credentials—the so-called “keys to the kingdom”—by potential terrorists and undocumented aliens.

The Act fails to deter terrorists, because the Federal government neatly exempted itself from the provisions of the Act, so potential terrorists still can get into the country by obtaining legitimate visas from the State Department using fake passports, and then obtaining state credentials with the bona fide visas. Likewise, if an undocumented alien wants to obtain a Maine driver's license, their only option is through expensive forgeries, which expose them to prosecution. Most don't bother. As I have said for the last ten years, undocumented aliens don't come here to drive, and they don't come here to throw elections. They come here to work for a better life. If they can't get a license, they just drive anyway. The difference is that we don't know who they are, where they are, or what they're doing.

The Executive Order, then, only brings us around to where we started. Before the terrorist attacks of 2001 and the media-based hysteria over undocumented aliens, motor vehicle officials often expressed their preference to license undocumented aliens, with the theory that once people can comply with the law, they will. And they keep complying—they pay taxes, obtain insurance, and contribute in every way to society.

Immigration law has whip-sawed back and forth in American history. My ancestors came to America by boarding a ship in Europe (probably one step ahead of a firing squad), and then disembarking in America, and starting new lives. But we have periodically closed off access to our shores and borders or made it profoundly difficult to get here. But they still come anyway, and whatever we call them, they're here.

I will never argue that a small amount of fraud is acceptable, or that even partisan concerns about the integrity of our systems should be dismissed because I think things are just fine as they are. We should always be vigilant for criminal behavior, we should always be guardians of the public trust, and we should embrace partisan concerns as ripe opportunities to remain accountable to the people.

But there's something larger in the mix, as well; the balance point. I've talked a little about the REAL ID Act; REAL ID is a legislative fantasy, a collection of statutes and rules that is nowhere anchored in reality or common sense. In implementing even those most basic elements that are parallel to the

requirements of the Act, our citizens have been so frustrated in trying to find ways to comply that Maine's Legislature voted unanimously to not participate in the REAL ID Act. You see, it's easy to target "terrorists" and "illegal aliens". But in administrative processes, you have to treat *everyone* as if they are a potential terrorist or illegal alien, even if you know better. By closing off access to government, many will simply walk away—it's too hard, they'll say. And my vote doesn't really matter anyway.

While security is important and vigilance is our task, we must take care that we do not risk excluding rightful Americans from exercising the voting franchise in order to squelch suspected fraud that, frankly, we do not experience. The purpose of our election laws, as I stated, is dual; we must have security, but we must also preserve access. I do not believe potentially discouraging any American citizen from expressing their vision for this country at the ballot box is worth solving problems that we do not have with solutions that will not meet your goals. I thank you for your attention today, and I am available to answer any questions you may have.

Mr. DESANTIS. Thank you, Secretary Dunlap.

The chair now recognizes himself for 5 minutes.

If you look at the President's executive order, I think, as has been pointed out by some of my Democratic colleagues, it doesn't say anything about voting; it talks about the work permits and the Social Security numbers, kind of the positive benefits that will result from this exercise of "prosecutorial discretion." But it doesn't say anything about voting.

So, Secretary Kobach, what would your response be when people say the President didn't even address voting. How could this possibly be an issue?

Mr. KOBACH. Thank you, Mr. Chairman. It is perhaps an unintended consequence of what the President has done through these executive actions, because you are now giving approximately 5.8 million people, once they get their deferred action, a Social Security number and they, in turn, can get that driver's license.

I want to point something out. Of the aliens that we have specifically identified in Kansas on the voter rolls, the ones that were presented to the Federal District Court, approximately half of those aliens registered at the DMV; and this was before we had our proof of citizenship requirement in place. So when you get that driver's license, at all too many DMVs across the Country, the clerk who has been handing out licenses all day long and has done several hundred within just the morning alone, will oftentimes, out of rote habit, say, and would you like to register to vote at the end of the process.

So aliens are often given the opportunity to register to vote by someone they see as a government agent. And they sometimes use that as an excuse when they eventually are found, and sometimes in cases in the previous administration, when people were deported for falsely asserting U.S. citizenship, which is a felony under Federal law, they would sometimes say, but I thought I could register to vote because this lady who works for the government asked me if I would like to register to vote.

So quite often the government agent on behalf of the county unwittingly invites the alien to register; the alien unwittingly assumes that he is able to register. So in many cases it is going to be completely accidental, but it will happen. It is a guaranty that it will happen, because when they go to the DMV they will almost certainly be asked that question.

Mr. DESANTIS. Mr. Husted, you wrote a letter to the President after he issued these executive actions, this was late January 2015, and you wanted the Federal Government, I think, to cooperate with the State so that you could ensure the integrity of the elections. Have you received a response from the Administration about that letter?

Mr. HUSTED. Mr. Chairman, I have not.

Mr. DESANTIS. And what would you like the Administration to do and how will that help you do your job to ensure elections with integrity?

Mr. HUSTED. What we have asked them for are anybody who is receiving a Social Security number who is a non-citizen, we would like to have the name, the date of birth, and the last four digits of their Social Security number. That would allow us to match it

against our Statewide voter data base to determine whether anyone who is a non-citizen is on our voter rolls, and then we would go through the process of trying to remove them.

But that is simply what we are asking for. We believe that it is something that should be easily doable for the Federal Government. And that would include people who are here under present tools that allow you to be in America legally and those who would come under the President's new administrative action.

Mr. DESANTIS. And do you concur with that, Mr. Kobach, would that be helpful?

Mr. KOBACH. That would be helpful. I do think it would also be helpful for the Congress to clarify that the Election Assistance Commission is a service agency, not a policymaking agency, and that it should not have the authority, which it has illegally exercised, at least according to the district court, but that case is still pending, its authority to tell States, no, we don't think you need proof of citizenship, which is essentially what that agency did. In fact, I shouldn't say that, it wasn't the Commission, it was a temporary executive director of the Commission that rendered that opinion. So that would also be helpful.

Mr. DESANTIS. Mr. von Spakovsky, you are somebody who is very knowledgeable; you write a lot on voting issues. Are you familiar with this Richmond Chattha, and Earnest study that came out in 2014 about non-citizens voting in the 2008 election?

Mr. VON SPAKOVSKY. I am familiar with it.

Mr. DESANTIS. I think, as I read that, it was their contention that, and I think as people have pointed out, you are talking about some of the big national elections. There may not be enough people who are non-citizens to make a huge difference, but in 2008 it was these authors' contention that there were enough non-citizens that voted in North Carolina to shift those electoral votes one way, and that the 2008 Senate race in Minnesota, the margin of victory was lower than the number of non-citizens who voted. Is that an accurate reStatement of what they concluded?

Mr. VON SPAKOVSKY. It is. Now, I should mention that there has been some debate over the validity of that, but they based that assessment on something called the Comprehensive congressional Survey, which was a survey of literally tens of thousands of voters in the 2008 and 2010 election. Look, you can debate that. The authors of the study actually posted a long article in The Washington Post in which they answered some of the claims of critics, but that shows that we do have a potential problem; and the actual prosecutions that have occurred shows it is a real problem.

Mr. DESANTIS. Secretary Dunlap, in Maine, if somebody gets a work permit based on the President's executive action, will that, ipso facto, entitle them to get a driver's license in Maine?

Mr. DUNLAP. Not necessarily, Mr. Chairman. There would be other required documents as well. We do require proof of residency. The Social Security number is not, we don't utilize that as proof of citizenship simply because you do not need to be an American citizen to obtain a Social Security number. It causes a fair amount of discomfort with people. For example, when we tell them we don't accept military ID cards as proof of citizenship for the same reason.

So a work permit on its face would not be sufficient for us to issue a driver's license; there would be other required documents, including proof of identity, which might be a passport, it might be a birth certificate. Lacking those documents, we would probably have to go into a lengthy exceptions process.

If I may give you a very brief example using an American citizen, last year we were confronted with the difficulty of somebody trying to obtain a renewal of their driver's license, and we could not process that request because they could not prove citizenship. As it happened, the individual is of Vietnamese birth, had been adopted by an American serviceman during the Vietnam War, and the hospital where he was born was destroyed by missile fire 2 weeks after his birth and all the records were lost. After a fair amount of research and working with some of our partners in the Federal Government, I was able to inquire after the constituent if they had a copy of his adopted father's obituary, and it was found because he had been listed as a survivor, that was sufficient to satisfy our regulations.

So it takes a fair amount of detective work to ascertain proof of identity.

Mr. DESANTIS. But Maine, though, you would think it would be unacceptable if a work permit comes in, nothing else; no rubber stamped driver's license in Maine, correct?

Mr. DUNLAP. That is correct, Mr. Chairman.

Mr. DESANTIS. OK.

I will recognize the ranking member here in a second, but I just would like to respond to one contention that was made about the fact that there are penalties for people who vote illegally in the Country, and that if somebody obtained work authorization, that could actually lead them to be removed from the Country and sent back to their home country.

The problem with that is I don't think that any of those penalties have any bite whatsoever anymore, because we know, for example, by DHS's own admission, they released, in 2013 alone, 36,000 people who were illegally in our Country and had been convicted of criminal offenses, in some cases very serious offenses like homicide and rape and aggravated assault and drug trafficking. And of those 36,000 in 2013, guess what we now know? One thousand of them have already been convicted of new crimes. So you literally have a situation in which these folks were in the criminal justice system, being convicted. Supposedly we say that would be a penalty that people would be sent back to their home country. And yet they are released into society by DHS and now other people have been victimized already, less than 2 years later.

So I appreciate the fact that there are penalties. I just don't think that those penalties have very much teeth, given the way this system has been administered in the last couple years.

My time has expired and the chair will now recognize the ranking member of the National Security Subcommittee, Mr. Lynch, for 5 minutes.

Mr. LYNCH. Thank you, Mr. Chairman.

My thanks again to the panel.

Secretary Husted, I was trying to read your reports from the Ohio Statewide election survey. Is it correct that you actually referred 135 cases of voter fraud in 2012? Are those numbers right?

Mr. HUSTED. Off the top of my head, I believe that sounds about right.

Mr. LYNCH. That was 135 cases out of 5.63 million voters in Ohio. I did the math and it comes out to about .00002 percent.

Secretary Dunlap, you had a chance to review your predecessor's request of review of Maine's election practices as it was considering adopting new voter ID laws. You agreed with the recommendations to continue early voting and hold off on the proposed requirements for voter identification. Secretary Dunlap, how many instances of voter fraud has Maine uncovered, if any?

Mr. DUNLAP. We had two cases of misuse of an absentee ballot, for alleged double voting, Congressman.

Mr. LYNCH. That is illegal in Maine?

Mr. DUNLAP. It is, sir.

Mr. LYNCH. OK. There are some parts of my district I think this is going on, so I just had to question that.

Mr. DUNLAP. And I would point out that that is over the course of 4 years.

Mr. LYNCH. The old slogan for James Michael Curley was vote early, vote Curley, vote often. So I am correct in saying that you would generally describe voter fraud as very rare?

Mr. DUNLAP. Extremely rare.

Mr. LYNCH. Would you say the incidence of voter fraud by non-citizens is even smaller?

Mr. DUNLAP. I have no evidence of it in the State of Maine, Congressman.

Mr. LYNCH. I just want to go over this again. The proposition here is that these folks who have received deferred action status, and whether you agree with that or not, that is beside the point. I actually think, and I think the President agreed, that the best result would have had us coming up with a comprehensive immigration policy that would address everyone. I think even the Administration said this is imperfect. This was done, in some sense, out of frustration because we couldn't get comprehensive immigration reform done.

So now we have this deferred action executive action, and that leaves us with this situation where certain individuals are going to be allowed to stay in the Country. But if they vote, the penalty is that they would be deported. That is the penalty. And I am not sure equating people who rape and maim and rob is the same group that you are talking about going in and actually voting in an election. I don't think you can equate those.

But does it make sense that someone that has been given a chance, at least through deferred action, would go and jeopardize their status here in order to be .0002 percent of a Statewide election? What is your sense of this, Mr. Dunlap?

Mr. DUNLAP. It doesn't make sense to me, and in many ways, Congressman, the executive order brings this around full circle to an earlier time in motor vehicle administration when many motor vehicle administrators really wanted to provide credentials to people who came here for work purposes, legally or illegally, for the

simple premise that, if they are in your system, you know who they are and you know where they are. And for the purposes of highway safety, we all want to make sure that everyone who is operating on the roads that are shared by our families are in fact qualified to operate those vehicles.

The reality is if you make it difficult for them to obtain those credentials, they are going to drive anyway, they are just not going to have a license.

What we find is that if people have the opportunity to comply with the law, they will. If it is impossible for them to comply with the law, then they are already at variance with it. So it only makes logical sense that if people have the opportunity to succeed in America, that they will seize upon that opportunity and not throw it into jeopardy. At least that is what history shows us.

Mr. LYNCH. Well, thank you, Mr. Secretary. I have 8 seconds left and I am just about done here.

All I can say is I am honored to be the ranking Democrat on a National Security Subcommittee, and I am sure, during this next couple of years, we are going to have a real opportunity to deal with national security issues. This, however, does not strike me as being one.

Thank you. I yield back.

Mr. DESANTIS. The chair now recognizes Mr. Jordan, chairman of the Benefits Subcommittee, for 5 minutes.

Mr. JORDAN. I thank the chairman.

Secretary Husted, you had some numbers in your testimony. I want to go through them. The first number is 291, 291 people who were non-citizens who were on the registration rolls in Ohio, is that right?

Mr. HUSTED. That is correct.

Mr. JORDAN. How did you derive that number?

Mr. HUSTED. When you apply for a driver's license in Ohio as a non-citizen, you have to indicate that at the time you receive your license. We went back, searched that data, then went and looked at the Statewide voter roll after the election, found the matches of 291 people, and then waited an entire year, because this is self-reported data, and then waited an entire year to see if these individuals also self-reported themselves as non-citizens a year later. So it is their information; they are the ones that provided it.

Mr. JORDAN. And a year and a half way to get to that number.

Mr. HUSTED. That is the only way we could get to it.

Mr. JORDAN. In your professional judgment, is that a low estimate or could the number be significantly higher?

Mr. HUSTED. It could be higher. That is just what we can find out at this point.

Mr. JORDAN. OK. Then another number you had in your testimony was 70 elections. These are the number of elections decided by one vote?

Mr. HUSTED. That is correct.

Mr. JORDAN. And that was in what timeframe?

Mr. HUSTED. That is in the past 15 months.

Mr. JORDAN. In the past 15 months. So that .00002 percent that the gentleman from Massachusetts was talking about, that is a

small number, but that small number could have changed 70 elections in Ohio in the last 15 months, is that right?

Mr. HUSTED. Yes. We have had 70 elections that were decided by one vote or a tie.

Mr. JORDAN. So you have 291 on the voter registration rolls; that is a low estimate. You had 70 elections in the last 15 months decided by one vote. And now the President just said five million more non-citizens can get access to the very documents that allow people to register to vote. Is that accurate?

Mr. HUSTED. That is correct.

Mr. JORDAN. So the problem is potentially much bigger, right?

Mr. HUSTED. Correct.

Mr. JORDAN. Now, in your testimony you also talked about voter registration drives as maybe the biggest concern that you have as the head election official in your State. Can you walk me through that?

Mr. HUSTED. Yes. In Ohio, as you are well aware, there are a lot of third-party voter registration drives. Their goal is to register as many people as they can. A lot of times those individuals don't take the care that somebody at the DMV might be at explaining the rules for doing this, and a lot of times folks who—of that 291, some of them didn't even know that they weren't allowed to be registered to vote.

Mr. JORDAN. So the point is that compounds everything I just went through, potentially.

Mr. HUSTED. Correct.

Mr. JORDAN. Right. So we have 70 elections in Ohio decided by one vote in the last 15 months. Now, think about it. If some of that was done by non-citizens illegally participating in the election process, what does that say to citizens?

What does that say to a senior citizen, when this non-citizen is already getting Social Security benefits? What does that say to a taxpayer when this non-citizen is already getting tax refunds? What does it say to legal immigrants who came here and did it the right way and are citizens, what does it say to them that now the position they took may have been defeated because a non-citizen potentially in 70 different races in the last 15 months decided the outcome of an election? That is what we are concerned about, right?

Mr. HUSTED. It says we are letting them down and we need to fix it.

Mr. JORDAN. Exactly. And that is why you are here and that is why you wrote the letter to the President of the United States, right?

Mr. HUSTED. That is correct.

Mr. JORDAN. Now, in November, when the President decided he was going to go down this path and create this mess we just walked through, did he contact you, John Husted, Secretary of State for the State of Ohio?

Mr. HUSTED. No.

Mr. JORDAN. Now, think about this. Every political pundit in the world knows Ohio is always a central State in every Presidential election; important State, seventh largest State, a lot of people there. And the President of the United States didn't contact the

guy who has been running elections in the State that is always the center of the university in a Presidential race, didn't contact you and ask, hey, is there going to be concerns or problems if we do this?

Mr. HUSTED. He did not, no.

Mr. JORDAN. Now, you are in town, you and Mr. Kobach and Mr. Dunlap are in town with the Secretary of State Association, right? You have a conference and you are listening to speakers and all the things you guys do. Do you know, Mr. Husted, if the President contacted the Secretary of States Association before he issued this order in November of last year?

Mr. HUSTED. I am not aware of any contact.

Mr. JORDAN. Mr. Kobach?

Mr. KOBACH. I am not aware.

Mr. JORDAN. Mr. Dunlap?

Mr. DUNLAP. The President does not require my permission to issue an executive order.

Mr. JORDAN. I didn't ask that. I said did he contact you?

Mr. DUNLAP. He did not, sir.

Mr. JORDAN. So the head of election officials, the association that represents and conducts elections, the President didn't even talk to you guys when he did this, and now is potentially allowing five million people to get access to the documents so they can register to vote, and he didn't even have the decency to call you guys?

Mr. HUSTED. We did not get contacted, and I would say why I wrote the letter is that I want to comply with the Federal law.

Mr. JORDAN. Exactly, which brings me to my last question, Mr. Chairman.

We have Secretary Husted, who is offering a solution. In fact, he wrote the Ohio delegation and he wrote the White House and said, hey, here is all we have. I am not even going to comment. I think what he did is unconstitutional; most law scholars do. Even liberal ones think what he did is unconstitutional.

But you are not even commenting on that, you are just saying we want to fix it so at least our elections can only be decided by people who are actually citizens. You have offered a solution. Have you heard from the White House about your solution, Mr. Husted?

Mr. HUSTED. We have not. And it is particularly important when you are the Secretary of State from Ohio because we will get sued for not complying with the Federal law.

Mr. JORDAN. Exactly. Exactly. This is unbelievable. The White House didn't talk to the people who run elections before they did the order, and now we have a secretary of State in one of the most important States in every election, every Presidential election, offers a solution and the White House doesn't even have the decency. They weren't contacted on the front-end, but they should at least have the decency, when they offer a solution to fix the problem the White House created, the decency to talk to them and say, all right, let's work on it.

I yield back.

Mr. DESANTIS. The gentleman yields back.

The chair now recognizes Ms. Norton for 5 minutes.

Ms. NORTON. Thank you, Mr. Chairman. As I hear what passes for evidence, I can only say it is no wonder that the last two Con-

gresses have gone down in history as the least productive in American history.

I want to say for the record that the Social Security card that these immigrants get says valid for work only with DHS authority. These are immigrants who, for years, have been living in fear because they are undocumented. They live in such fear that they don't even report crime. Now we are made to believe that they will go to the polls and throw elections, even the much vaunted election in Ohio.

Mr. Dunlap, let me thank you for apparently being able to secure the vote without denying the vote.

In Kansas, Mr. Kobach, you have implemented so-called proof of citizen voting requirements. I do want to note that it delayed voting registration applications for 22,000 people, at least as of last four. That is 16 percent. Most of those were probably just as full citizens as you and I are.

But let me turn to Ohio while I still have some time. Mr. Husted, you have been particularly determined. In 2012, you initially denied the expansion of early voting hours in urban Democratic-leading counties covering Cleveland, Columbus, Akron, and Toledo. But at the same time, the record will show, there were early voting hours in heavily Republican counties like Warren and Butler. They were expanded to include nights and weekends.

The record shows there were such loud complaints about this patent, unadulterated unfairness that you limited early voting across the State to weekdays only. Is that not true?

Mr. HUSTED. Ranking Member Norton, that is not true. What is true in Ohio is that we have nearly a month to vote, 24 hours—

Ms. NORTON. Wait a minute. I didn't ask you what happens in Ohio. Did you not deny the expansion of early voting?

Mr. HUSTED. I did not.

Ms. NORTON. In Cleveland, Columbus, Akron, and Toledo?

Mr. HUSTED. And the answer to your question is I did not.

Ms. NORTON. What did you do?

Mr. HUSTED. I set uniform hours for the State of Ohio so that every voter would have equal access. The local—

Ms. NORTON. And you are denying that at the same time—

Mr. HUSTED. I am denying.

Ms. NORTON [continuing]. The early voting hours were set in Republican-leading districts. You are denying that on the face of the record.

Mr. HUSTED. I had nothing to do with it. Those were local election officials that did that.

Ms. NORTON. So you had nothing to do with that. Well, then, Mr. Husted, while my time is up, sir, before my time is up, isn't it true that these voting restrictions were overturned by a Federal district court and that you did not immediately comply with the full restoration of those voting rights?

Mr. HUSTED. That is not true, ma'am. We have complied with the Federal court ruling. We were also granted a stay.

Ms. NORTON. I said you did not immediately comply.

Mr. HUSTED. We immediately complied.

Ms. NORTON. Well, you appealed to the Supreme Court.

Mr. HUSTED. Ma'am, that is how the justice system works.

Ms. NORTON. And they refused to hear your case.

Mr. HUSTED. And they did hear my case.

Ms. NORTON. And what did they decide?

Mr. HUSTED. They gave us a stay, and it is still in Federal court.

Ms. NORTON. So you believe you have every chance of prevailing in this case, a case with the facts I have just enumerated, with the differences?

Mr. HUSTED. Ma'am, we vote for twice as long as the District of Columbia does, and everybody votes by the same rules.

Ms. NORTON. I doubt that you vote for longer than the District of Columbia. I doubt that very seriously and I challenge you to send to this committee evidence of that. But if you do, let me make sure that I inform elected officials so that they would at least be as good as Ohio is.

Mr. Husted, a recent study by two of your prominent State universities, Case Western Reserve and Cleveland State University, found that in 2008 African-American voters made up 56.4 percent of all weekend voters in Cayuga County, even though adult African-Americans made up only 28 percent of the population there. Can you understand, therefore, why there has been such an outcry in Ohio when two prominent research universities in your State found that cutting early voting on Sundays and weekend evenings could disproportionately affect African-Americans? I mean, shouldn't that concern you in a State like Ohio?

Mr. DESANTIS. Her time has expired, but I will let you answer that, then I will recognize Mr. Walberg.

Mr. HUSTED. Ma'am, I understand that, and I would invite you to Ohio to see what we do. I enforce the Ohio law, I don't make the Ohio law. But when granted the opportunity to establish hours, I have granted 2 weekends of early voting on the Sunday and Saturday before the elections; and that is how the Presidential election will be run in Ohio under a directive that I have issued so long as the courts allow so.

Mr. DESANTIS. The chair now recognizes Mr. Walberg for 5 minutes.

Mr. WALBERG. Thank you, Mr. Chairman, and I thank the panel for being here. And though this cuts into some of my questioning time, I think it is important that I express real concern, and even offense, at some of the Statements that are being made. I hope it comes from emotion, and not from the heart of hearts, that any party is attempting to quash and take away the rights that are given to all citizens of this Country, all legal citizens of this Country, regardless of color, race, creed, origin, gender. That is not happening with any of my support, and I know my colleagues as well.

I also say that that is offensive to those legal and documented aliens who serve in my communities well in providing services on farms, in hospitality, in construction, in IT, and all sorts of things that are extremely important to us, and yet they are doing it legally.

I say it as a proud father-in-law of a Rwandan who is here on an appropriate legal visa in the United States right now that expires in April, and he, with my daughter, will be going back to their home in Uganda. I say it as well based upon the fact that this hearing is important not so much even for the issues of voting, but

the issue of constitutionality and the strength of our Constitution, a Constitution that a legal constitutional scholar, our President, Stated 22 times he did not have the power to do this executive order, and then he did it. This is a constitutional crisis that we are dealing with and this is one of the issues that has resulted from that constitutional crisis.

So I make that Statement. I believe it is important for us to make sure that is on the record as well, that we want to see this Country move forward legally, and all citizens, all legals that are here are treated justly and fairly.

Mr. von Spakovsky, how big do you think this problem is?

Mr. VON SPAKOVSKY. Well, it is really hard for us to know because there is no systematic verification of citizenship status across the Country; we can only get a rough idea of it.

Mr. WALBERG. There is no way to quantify it?

Mr. VON SPAKOVSKY. No. But that is why, for example, I cited the GAO report, where they found that 3 percent of people called for Federal jury duty, and those come from voter registration lists, so 3 percent of 30,000 were excused from jury duty under oath because they were not U.S. citizens. That gives you a flavor of it.

I would remind this committee that in 1996 this committee issued a report investigating an election contest in California, one congressional race won by less than 1,000 votes, and in that one congressional race, after comparing INS records with voting records, this committee found that there were 624 non-citizens, clear evidence, who had voted illegally in that congressional race, and another 192 where there was circumstantial evidence that they were not U.S. citizens. Now, the race wasn't overturned, but this is just one investigation 20 years ago that found hundreds of non-citizens who had voted in a congressional race in California.

Mr. WALBERG. And it is likely to increase in its problem exponentially?

Mr. VON SPAKOVSKY. I believe so because now individuals who are here illegally are going to be legally obtaining Social Security numbers and driver's licenses, which are key documents in order to get registered to vote, according to the law that Congress itself passed in 2007, the Help America Vote Act.

Mr. WALBERG. In your opinion, how do we prevent or stop non-citizen voter registration or voter fraud? Does Congress need to change the law?

Mr. VON SPAKOVSKY. Yes. I think what Secretary Husted has said about getting access to the DHS data base on everyone given deferred action, for example, so they have their name, the last four digits of a Social Security number, and a birth date so they can start verifying that. That is the first step. The other thing you should do is require all Federal courts to notify State election officials when someone is called for jury duty and they are excused because they are not a U.S. citizen. They are not doing that right now. That is just a basic step.

Mr. WALBERG. So are there existing laws that could be enforced that aren't right now that would assist in this problem?

Mr. VON SPAKOVSKY. Yes. I would tell you I spoke to a former election official just this week, and he said that while DHS has finally started complying with the Federal law that requires them to

verify citizenship information when they get inquiries from State election officials, that they put up all kinds of burdensome red tape to make it difficult. The current system is slow and cumbersome, and he highly recommended that DHS work with State election officials to set up a better, quicker system.

Mr. WALBERG. Thank you.

Mr. DESANTIS. The gentleman's time has expired.

The chair notes the presence of the committee chairman, Mr. Chaffetz. Would you like to be recognized?

The chair now recognizes the gentleman from California for 5 minutes.

Mr. LIEU. Thank you, Mr. Chair.

Mr. Husted, for the record, I believe that Congresswoman Norton was talking about a 2012 case and you were giving answers to a 2014 case. That is sort of my understanding of her interchange.

But my questions are for Mr. Dunlap. I have heard a lot of hypotheticals today. I am sure anything can happen. It is certainly possible that that .002 percent change could 1 day affect the State of Ohio, that could 1 day affect a Presidential election. Anything is possible. But I just note that in the last election two-thirds of Americans did not vote. That number dwarfs by orders of magnitude .002 percent, and my view is that in our republic, in our democracy, we are better served by having as many eligible voters vote as possible. Everyone's time is limited and constrained. I think that our democracy is better if the 50 secretaries of State focused their time on increasing voter turnout for eligible voters, that makes our Country stronger, than focusing on .002 percent hypotheticals.

So let's talk about what the actual laws are right now in America.

Mr. Dunlap, can you just walk through again the requirements that an individual must meet to be eligible to vote in your State of Maine?

Mr. DUNLAP. In order to be eligible to vote, sir, they have to be a domiciled resident of the State, they must demonstrate citizenship, they have to give proof of identity, and affirmative proof of where they live.

Mr. LIEU. And what are the consequences if someone, under Maine law, engages in voter fraud?

Mr. DUNLAP. The penalties range from elevated misdemeanors to Class C felonies, which are punishable by up to 5 years in prison and \$5,000 in fine, and then being remitted to Federal authorities for further penalties and expulsion from the Country, sir.

Mr. LIEU. And has the President's executive order changed the law on voter fraud in any way whatsoever?

Mr. DUNLAP. No, sir. We still maintain the same due diligence that we did before.

Mr. LIEU. Has the President's executive order conferred any new right to vote for non-citizens in Maine?

Mr. DUNLAP. It has not affected the right to vote for anyone other than naturalized or born United States citizens, sir.

Mr. LIEU. And it is still illegal for non-citizens to affirm that they are citizens in order to vote in Maine.

Mr. DUNLAP. That is correct, sir.

Mr. LIEU. As a representative of California, I would like to, at this time, read an excerpt from a Statement prepared for this hearing by California Common Cause, a national non-partisan advocacy organization founded in 1970 to enable citizens to make their voices heard in a political process. California Common Cause writes: "Ensuring that every eligible citizen has the opportunity to cast a vote free from discrimination and obstacles is fundamental to a democracy that aims for and professes representation of all. As Stated below, we see no threat to election processes at either the State or Federal level resulting from the President's orders."

I ask unanimous consent to enter this Statement into the congressional record, Mr. Chairman.

Mr. DESANTIS. Without objection, it will be so entered.

Mr. LIEU. And with that I yield back the balance of my time.

Mr. DESANTIS. The gentleman yields back the balance of his time.

The chair now recognizes the gentleman from Georgia, Mr. Hice, for 5 minutes.

Mr. HICE. Thank you, Mr. Chairman.

I think it has been clearly established here so far that I don't think there is anyone in the room that would not acknowledge that there at least have been instances, as you have brought up, in the thousands, perhaps, in fact, certainly over the course of time. We have examples from North Carolina and Minnesota extensively so. We all know that there have been problems of voter fraud. We also know that Federal law authorizes the Department of Justice to prosecute non-citizens for both registering and voting. This is a criminal offense and, as has just been mentioned, can result in removal from the Country.

My first question to each of you, do you know, to the best of your knowledge, of any example where the Department of Justice has in fact brought charges against anyone or deported them?

Mr. HUSTED. I do not, sir.

Mr. KOBACH. I know of examples in the prior Administration. I cannot think of anyone of an alien voting in this Administration where charges have been brought against that alien for voting.

Mr. VON SPAKOVSKY. I have to agree with Secretary Kobach. I know of instances, during the prior Administration, where individuals were not only prosecuted by the Justice Department, but this was considered in their citizenship applications. But as I pointed out, I am not aware of that being done in this Administration, and I know from personal knowledge that of the almost 300 individuals that Fairfax County sent over to the Justice Department notifying them that these were not U.S. citizens, that they had registered and that almost half of them had voted. That fell into a black hole at the Justice Department.

They did nothing to investigate or prosecute those cases, and I don't believe that any of those non-citizens had any of the penalties brought up against them that could have allowed their removal from the Country. In fact, I cite in my written testimony a letter published by a county election official in Tennessee that she got from a non-citizen. He had gotten this from DHS and it was a letter—this person was applying for citizenship and this was a letter

telling him that he needed to be sure that he was taken off the local voter registration list.

So they clearly weren't going to punish him or in any way delay his citizenship; they just told them, well, to go forward with your citizenship application, you need to be sure you are off the list.

Mr. HICE. OK, thank you.

Mr. Dunlap?

Mr. DUNLAP. I do not know of any such action in my State, sir, but I also Stated earlier that we have never had a complaint of such action, either, so it makes sense.

Mr. HICE. OK. All right, so what we have here, evidently, is that at least within this Administration we have no examples that we have any knowledge of where the law in this regard has been upheld by the Justice Department. So we have, evidently, a Justice Department unwilling to abide by the law, which, of course, is what we are seeing across the board even in so many instances right now; and if the rule of law is not going to be upheld, it is of very little value at all to any of us.

Now, it has also been brought up that the motor voter law, as it is known, where individuals are given the opportunity to register to vote when they get their driver's license, is posing a significant problem, as you have mentioned; and from what we hear from multiple DMVs across the Country, they don't believe it is their responsibility to find out whether or not these individuals are citizens of the United States or not.

Would you agree with that?

Mr. KOBACH. I would say that those States that are fully complying with the Real ID Act of 2005, they are least trying to ascertain whether or not the person is a citizen who is a U.S. citizen or is an alien here lawfully present. But it is at the later stage of the process where they ask that final question, and would you like to register to vote. Even in fully compliant Real ID States they are not going back and checking, hey, wait a minute, I have to check your citizenship.

Mr. HICE. But at some point someone has to be responsible; it is either the State or the Federal Government. Real quickly, almost a yes or no answer, is the DHS trustworthy? Do States believe that they can trust the DHS to give this information?

Mr. KOBACH. We have asked DHS for a lot of information and it has not been forthcoming from DHS. And the one program they do make available, SAVE, which was created in the 1990's for State governments to use, they make that virtually impossible to use; they say, well, we won't let you check those names unless you can give us an independent number associated with that alien. Virtually impossible for the State to do.

Mr. HICE. We have an enormous problem here, obviously, and it is only getting bigger. The President's actions to grant de facto amnesty to five million is just exasperating an already existing problem, and I and Congress should look for solutions to prevent non-citizens from diluting the ballots of citizens in this Country.

Thank you.

Mr. DESANTIS. The gentleman's time has expired.

The chair now recognizes Ms. Kelly for 5 minutes.

Ms. KELLY. Thank you, Mr. Chair. I would first like to ask for unanimous consent to enter a Statement into the record by our colleague, Congresswoman Marcia L. Fudge, who represents the 11th District of Ohio.

Mr. DESANTIS. Without objection.

Ms. KELLY. Thank you.

Ms. KELLY. I would like to focus a bit on the occurrence specifically of non-citizen voter fraud.

Secretary Husted, your office released a report on voter fraud in May 2013, including a review by 88 county boards of election in Ohio. According to that report, over five million total votes were cast in Ohio in that election. According to a letter you sent to the Ohio Attorney General, Mike DeWine, on December 18, 2013, how many instances of non-citizen voter fraud did you refer for the investigation?

Mr. HUSTED. We referred 291 cases on the non-citizen aspect of the issues. Those are two separate reports, so that you know; there was the voter fraud report, which did not include our non-citizen research because we had to wait for a calendar year after the election to double-check our work on that to make sure we didn't include anybody that shouldn't have been on the list. But on the non-citizen piece, there were 291 non-citizens that were referred to the attorney general's office.

Ms. KELLY. And what happened with those cases?

Mr. HUSTED. Those were investigated. Some of them were referred to local prosecutors. Seventeen of the people in those individual cases had voted; some of them have been prosecuted; there were plea agreements in other cases. But what we did with those who didn't vote, we simply sent them a letter and asked them to remove themselves from the voter rolls, because we do not have the authority under the law to remove them, so we asked them to remove themselves.

And then after waiting a few months, if they didn't comply, we sent them a second letter. And if they didn't respond to the second letter, then we turned them over to the attorney general's office for further action. Some of them removed themselves; some of them have, in some cases they didn't know they were on the voter rolls; in some cases they didn't know that they weren't allowed to be on the voter rolls; and in some cases we have never been able to track the individual down.

Ms. KELLY. So you wouldn't say people maliciously were trying to do something wrong if they didn't even know or some of the things you just said.

Mr. HUSTED. I think it is across the board. Some people were on there that knew they shouldn't be; some people were on there that didn't know that they shouldn't be.

Ms. KELLY. OK. So 17 cases of non-citizen voter fraud, so that, as I think one of my colleagues said, represents 0.0003 percent of the over five million total voters in Ohio.

I would like to say I believe it is a misallocation of time, money, and committee resources to combat a voting problem that is practically non-existent. This is especially true when many States are taking steps to make voting more difficult for eligible Americans by curtailing early voting hours and other barriers. We need to combat

that problem. And I believe this is especially important to make this point now, as this is the fiftieth anniversary of the Voting Rights Act, and it is utterly ridiculous in 2015 that American citizens are still fighting for the right to vote.

I yield back.

Mr. DESANTIS. The gentlelady yields back.

The chair now recognizes Mr. Carter for 5 minutes.

Mr. CARTER. Thank you, Mr. Chairman.

Gentlemen, thank you for being here. Appreciate you for being here very much.

Full disclosure: I am from Georgia, and in Georgia we are only one of four States that has a voter ID law. In further full disclosure, I am proud of the fact that I was a member of the Georgia State legislature when we passed that bill, and I voted in favor of it and even co-sponsored it. So full disclosure there.

I want to ask each of you, if you will, do you think it is one of our greatest rights here in America, the right to vote? Do you value that, as I do, as one of your greatest rights as a citizen?

Mr. HUSTED. I certainly do.

Mr. CARTER. Thank you.

Mr. KOBACH. Absolutely. And I would add that every time an alien votes, even if it doesn't succeed in stealing the election, it effectively cancels out the vote of a U.S. citizen and effectively disenfranchises that U.S. citizen.

Mr. VON SPAKOVSKY. And I have to agree wholeheartedly with that.

Mr. DUNLAP. I would certainly say, sir, that the right to vote is the preeminent of all of our rights.

Mr. CARTER. Thank you all.

Let me ask you. At least three of the four of you are secretaries of State. Do you consider it your responsibility in the office that you hold to make certain that only American citizens vote in our elections?

Mr. HUSTED. Yes, sir, I do, and I am here to try to find a solution to that problem, because as the Ohio Secretary of State, we cannot comply with the Federal law if we don't have access to the name, the date of birth, and the last four digits of the Social Security number. And we will see litigation where the courts will settle this issue rather than the Congress or the Administration, and I ask of you to give us what we need so that we can comply with the Federal law.

Mr. CARTER. Thank you.

Mr. KOBACH. Absolutely it is our responsibility do that, and I would note, partially in response to what Mr. Lynch said in his opening remarks, the fact that you attest to your U.S. citizenship on a voter registration card is not enough; it is clearly not enough from the many hundreds of cases, collectively, who have shown where people have signed the voter registration card, have checked the box, yes, I am a U.S. citizen. In many cases they probably didn't even know what they were checking because we subsequently learned that many of these aliens on our rolls don't read English or know English particularly well. So they may have been manipulated into signing that card.

But the bottom line is simply checking a box is not enough. That is why we in Kansas, and likewise in Georgia, moved to a proof of citizenship system. More States need to move in that direction and we need the Federal Government, especially the EAC, to get out of our way so that we can ensure that our voter rolls are clean.

Mr. CARTER. Thank you. Thank you.

Mr. Dunlap?

Mr. DUNLAP. I do believe that it is part of our prime directive to make sure that our systems do have integrity, but also that people can access them as well, and that is a very delicate balance that we maintain through our State legislature as we craft election law.

Mr. CARTER. Mr. Husted, you have made it clear that Ohio takes this very seriously and you have a number of checks and balances to make sure that it is a truly American citizen who gets to vote.

Mr. Kobach, I am very aware you have the same laws as the State of Georgia with voter ID.

Mr. Dunlap, I am just a little bit concerned. I still don't understand the checks and balances that exist in Maine to make sure, the system there, that only Americans are voting.

Mr. DUNLAP. Well, if you are speaking in reference to a voter ID statute, that was proposed the last legislature and it was converted under the Republican administration that preceded me into a resolve that created a study committee that examined that issue. In the State of Maine, that study committee actually recommended that we not pursue photo ID to access a ballot because of the hardship that would cause on legal citizens from being able to access their ballots to participate in their election.

Mr. CARTER. OK, so you don't have voter ID, but what proof do you require, then?

Mr. DUNLAP. Well, in order to register to vote, as I mentioned before, you do have to present photo ID, a government issued identification, and also an official document that shows that you live in the precinct in which you are registering. In order to obtain that driver's license, if you will, under Maine law, and I didn't get an opportunity to answer Mr. Hice when he asked the same question, but we are required under Maine law to determine citizenship. So if you follow that line, then we do have that check and balance, along with the subscribed oath that you take when you register to vote that everything you State in there is, in fact, true.

Mr. CARTER. I understand. Is a Social Security card enough?

Mr. DUNLAP. No, sir.

Mr. CARTER. So it takes more than that.

Mr. DUNLAP. Absolutely.

Mr. CARTER. Much has been made here today about the fact of this .002 percent, and I get that, I understand that. But I think all of you agree that even that should be zero, not .002 percent.

Mr. Dunlap, one last question. How many elections in the past few years have been decided in the State of Maine by .002 percent or less?

Mr. DUNLAP. When people say, sir, that they don't think their vote counts, I invite them to come to a recount where we see many races decided by one vote.

Mr. CARTER. So that .002 percent could have made a difference.

Mr. DUNLAP. Our races can be small, so it may exist outside that statistical figure, sir.

Mr. CARTER. Thank you, Mr. Chairman.

Mr. DESANTIS. The gentleman's time has expired.

The chair asks unanimous consent that Mr. Husted's letter be entered into the record. Without objection, so ordered.

Mr. DESANTIS. The chair now recognizes Mrs. Watson Coleman for 5 minutes.

Mrs. WATSON COLEMAN. Thank you, Mr. Chairman. First of all, I would like to ask unanimous consent to enter certain forms into the record, and those forms are the voter registration forms for Kansas, Ohio, and Maine. I think each of these documents clearly asks whether the submitter is a U.S. citizen. Kansas, for example, has a clear Statement saying, Warning: If you submit a false voter registration application, you may be convicted and sentenced to up to 17 months in prison. So I ask unanimous consent to enter this form into the record because it seems clear to me that non-citizens who receive a driver's license are fully apprised of the consequences of lying about citizenship on their applications.

Mr. DESANTIS. Without objection.

Mrs. WATSON COLEMAN. Thank you very much.

Mrs. WATSON COLEMAN. Mr. Kobach, I have a question for you. You mentioned something relating to a hog election in Kansas, and that you had problems with people from, I believe it was, Oklahoma? Were those people from Oklahoma non-citizens of Kansas or non-citizens of the United States of America?

Mr. KOBACH. They were non-citizens of the United States of America based on the county clerk of Seward County. Most of the employees at the hog processing plant in Oklahoma were non-citizens, both legal and illegal, it is believed. But some of the Seward County personnel recognized some of those applicants as being non-citizens based on personal knowledge and then based on the general perspective—

Mrs. WATSON COLEMAN. Non-citizens of what?

Mr. KOBACH. Of the United States.

Mrs. WATSON COLEMAN. OK. How do they know that?

Mr. KOBACH. As I just mentioned, there was some personal knowledge involving specific individuals, and then the county clerk also made a general assessment based on the fact that most of the employees at the plant were non-citizens.

Mrs. WATSON COLEMAN. Thank you.

Mr. Dunlap, how does the Maine mail-in registration form clarify voting eligibility requirements?

Mr. DUNLAP. Well, under State and Federal law, we do allow people to mail in their voter registrations. They do have to include a photocopy of their ID, as well as copies of those official documents I mentioned earlier; and they have to provide us with either the last four digits of their Social Security number or their driver's license as part of that mail-in registration.

Mrs. WATSON COLEMAN. So, to your knowledge, has there been a significant reporting of individuals not understanding this, these requirements?

Mr. DUNLAP. I have not gotten any reports of people not understanding the requirements. The work that is done, especially under

the National Voter Registration Act, in our motor vehicle offices around the State of Maine, that work does include ascertaining, as I mentioned, citizenship and explaining the meaning of the documentation to those that are applying. And when people do mail in their voter registration forms, if they are incomplete, they are rejected and referred back to the registrars of voters, who then followup with the voter to make sure the documentation is complete.

Mrs. WATSON COLEMAN. So when third parties go out and do voter registration, how are you sure that they are getting people who are eligible to register to vote to actually register? Are they asked to accompany those forms with the information that you would ask of an individual?

Mr. DUNLAP. We handle those one card at a time, so each one is treated separately and each one is examined for every field to make sure the fields are complete and that the documentation that is required is, in fact, provided.

Mrs. WATSON COLEMAN. Do you think that the laws on the books as of right now are really adequate to ensure that there is an understanding and a compliance for voting?

Mr. DUNLAP. I do. I do. And we have had, as I say, a number of hotly contested recounts over this last election cycle, and as those recounts were concluded and as the election itself was certified and tabulated, I have had no question about the integrity of our election systems in the State of Maine.

Mrs. WATSON COLEMAN. Has there been anything identified in the Presidential executive actions that are loosely related to this issue, if at all, and I certainly don't think that they are, that somehow enhances the opportunity of voter fraud by non-citizens?

Mr. DUNLAP. It has not impacted our ability to enforce Maine election law.

Mrs. WATSON COLEMAN. Does your office have a sense that our participation of eligible voters voting or not voting has become sort of diminished in our elections and that we should be doing something to encourage those who can vote to vote?

Mr. DUNLAP. Not in the State of Maine. This last election cycle, I am proud to say that Maine led the Nation in turnout, with 60.9 percent of voter-age eligible voters utilizing the processes that we provide them.

Mrs. WATSON COLEMAN. Well, I certainly wish we could take that as a standard and try to apply it and exceed it.

I certainly think that what we have been experiencing these last elections would suggest very strongly that we need to be concentrating on efforts to get eligible people to vote, and that the few instances and the expectations or the projections of a possibility of a problem does not necessitate the kinds of resources and application of time, resource, or money that we are devoting to this today. Thank you very much.

Thank you, Mr. Chairman.

Mr. DESANTIS. The gentlelady's time has expired.

The chair now recognizes the gentleman from North Carolina, Mr. Walker, for 5 minutes.

Mr. WALKER. Thank you, Mr. Chairman. I would like to commend you guys for the duration here and hanging in there. But I think even more I am impressed with these young ladies who have

sit on this front row the entire time. I don't know who their parents are, but maybe we need to have you back on a committee on parenting or something. So, yes, excellent job there. Well behaved.

I want to start off by addressing something absolutely crucial to the understanding and the purpose of this hearing. I have heard a few comments today saying this is frivolous, why are we here, but let's be clear. The exact purpose that we are here today, and that is because of President Obama's executive overreach. Whatever the President could not pass through Congress in his first 6 years is now getting force-fed to all Americans. He has created chaos at the Federal, National, and at the State level by expanding the executive powers at whim. That is one of the reasons that you guys are here today.

Strong Statement, but I believe his disrespect of the presidency, that is, the President, the legislative process, and the States as independent sovereign bodies. Most of all, he has cheated Americans out of their constitutional prerogative to be heard by their elected representatives.

I do have a question. It seems like today that we have tried to make a case in some instances that only a little bit of illegal activity is OK. I don't understand that, so my question is what percentage of voter fraud is OK. I know that is rhetorical, but I would love to hear just a quick response on how you feel about that for the record.

Mr. HUSTED. Mr. Walker, no amount of voter fraud is OK, particularly for a Secretary of State who is in charge of overseeing elections. And I have heard the topic come up about voter turnout. I think voter turnouts improve when people believe that their elections are run with integrity. And this is part of helping to build confidence in the entire system of elections, and that is, in part, along with the legal responsibilities I have, as to why I am here today.

Mr. WALKER. Well, thanks for taking pride in that, Mr. Husted. Mr. Kobach?

Mr. KOBACH. I agree with Secretary Husted. Absolutely no voter fraud is OK. And even if the instances are relatively small in a particular election, like we saw in the 2010 election in North Kansas City, Missouri, it can steal an election. There are so many close elections. So it is a red herring to keep reciting a very small percentage. If we didn't have that close elections in America, then that would be a legitimate argument. But we do.

Mr. WALKER. Thank you.

Mr. VON SPAKOVSKY. Congressman, the whole reason the U.S. Supreme Court upheld the voter ID as constitutional in 2008 was because it said not only does this Country have a history of voter fraud, but could make the difference in close elections. It is a completely invalid comparison to take the number of prosecutions in cases and compare it to, for example, the total number of votes cast in a particular State because of that very issue, it can make a difference in close elections.

I keep going back to Fairfax County, the 117 individuals we found who were not U.S. citizens who had voted in past elections. Virginia has millions of registered voters. Yet, in the past few years we have had attorney generals in other cases decided by less than

500 votes in one case, less than 1,000 votes in another case. And that was only one county where we found over 100 non-citizens who had voted in prior elections.

The key thing is any kind of fraud like that cheats American citizens from the value of their vote.

Mr. WALKER. Thank you.

Mr. Dunlap?

Mr. DUNLAP. No violation of law can be excused or dismissed. In the context of this discussion here today about the impact of the President's executive order and our ability to conduct free, fair, and transparent elections, and some of the solutions that have been offered, I am a little bit bewildered by it all simply because, as I have stated repeatedly here today, the executive order has not impacted my ability to enforce Maine election law or Maine motor vehicle law.

I would point out that I flew here in a plane; I did not build an airport and start an airline. So the real solution to the problems that are perceived here is immigration reform, not trying to build new data bases and find ways to screen out ineligible voters.

Mr. WALKER. Thank you, Mr. Dunlap.

One last question. I have about 45 seconds left, so just a quick answer. What percentage of voter fraud goes undetected? Is there any way to have a number on that? How would we know that?

Mr. DUNLAP. I can say with great assertion that our 503 municipal clerks and registrars do an extraordinary job making sure that this system is executed to its fullest and that every T is crossed and I is dotted.

Mr. VON SPAKOVSKY. And I have to say that, as the 7th Circuit pointed out when it upheld Indiana's voter ID law, you can't detect that kind of fraud when you don't have the tools in place to detect it.

Mr. WALKER. Thank you. That is my point.

Yes, go ahead, Mr. Kobach.

Mr. KOBACH. Prior to our adoption of laws with proof of citizenship and photo ID, the vast majority of voter fraud went undetected. And one other point. The numbers we have given you, 291 cases in Ohio, I mentioned in my testimony approximately 200 cases in Arizona, 20 cases in Kansas over a 3-year period; those are just driver's license data base checks. That is only the small subset of aliens who happened to have applied for a driver's license. The rest of the alien population you cannot detect on the voter roll using that method.

Mr. WALKER. So the point being this: the numbers that we have heard thrown out, .02 percent here, really is a number that shouldn't even be taken into consideration because of what we can't detect that is voter fraud.

Mr. Husted, I will let you close, then I will yield back.

Mr. HUSTED. I would just reiterate that I can't answer the question without access to the last four digits of the Social Security number, the name, and the date of birth, because there is no way for us to make that determination without access to that information.

Mr. DESANTIS. The gentleman's time has expired.

The chair now recognizes the gentleman from Tennessee, Mr. Duncan, for 5 minutes.

Mr. DUNCAN. Well, thank you, Mr. Chairman.

I had other meetings, and I apologize if I get into something that you have already covered, but I read in our briefing paper that it says non-citizen voting is a criminal offense under 18 U.S. Code Section 611, and a removable offense in INA Section 212, various subsets. But then it is very seldom prosecuted, seemingly, because there are not high-profile people involved in it, and too many prosecutors don't seem to want to prosecute things unless they are going to get some good publicity about it.

Our briefing paper also says the California Secretary of State reported in 1998 that 2,000 to 3,000 of the individuals summoned for jury duty in Orange County each month claimed an exemption from jury service because they were not U.S. citizens. But these individuals were summoned from the voter registration list. It seems to me that if that kind of thing is happening in that one county, this is a much bigger problem than perhaps some people have said here today.

Mr. von Spakovsky, I know you wrote a book about this, I think, at one point. Now, in one of our briefing things it says that voter fraud could be dramatically reduced if Federal, State, and local governments simply share the information they already obtain regarding citizenship status. Do you agree with that? And what would be the No. 1 thing that you think we could do that is not being done now, or should be done that is not being done now?

Mr. VON SPAKOVSKY. Require DHS to put in an easily checked system that allows the Secretaries of State, such as the gentlemen here today, to run data comparisons between their State voter registration lists and DHS records, similar to what, frankly, the State of Kansas is already now doing with a number of other States, where they are doing data comparisons to find people who have registered in multiple States.

Mr. DUNCAN. Well, it just seems a shame to me that this is a violation of Federal criminal law, and a lot of people just slough it off as if it is really not anything too bad, so we are not going to do anything about it.

Thank you very much, Mr. Chairman.

Mr. DESANTIS. The gentleman yields back.

We are happy to welcome Mr. Castro from Texas, who is not on the committee, but asked to be waived on, and I will now recognize you for 5 minutes.

Mr. CASTRO. Thank you, Chairman DeSantis, and thank you for the courtesy of allowing me to be here. This is an issue that I take great interest in. I served in the Texas legislature when the legislature passed the Texas voter ID law. It was around the same time that redistricting plan was passed in Texas, which a Federal court found intentionally discriminated against minorities in Texas, African-Americans and Hispanics. So I apologize, like all of us who have been running around, I may have a few questions over which you have already tread.

But let me ask each of you very quickly what was the participation rate in each of your States for the 2014 mid-term elections? Just a number real quick, or ballpark.

Mr. HUSTED. Thirty-nine percent.

Mr. KOBACH. Our participation rate was 51 percent. And I would note that that increased from 50 percent in our previous non-Presidential election—

Mr. CASTRO. OK. No, no, that is fine.

Mr. KOBACH. And we put photo ID in place is my point. And the number went up.

Mr. CASTRO. Sure. I don't mean to make an argument of it; I just need a number.

Mr. KOBACH. Just thought you might want to know.

Mr. CASTRO. Fifty-one percent?

Sir, what was yours?

Mr. DUNLAP. It was 60.9 percent of voter age eligible.

Mr. CASTRO. OK, so somewhere between 39 and 60? And which of your States has voter ID laws in effect now?

Mr. KOBACH. In Kansas we have photo ID and proof of citizenship.

Mr. CASTRO. OK.

Mr. HUSTED. In Ohio we use the Federal standard.

Mr. CASTRO. So did you pass a State voter ID law or not?

Mr. HUSTED. We have an ID law, but not a strict photo ID law, so you could use bank Statements and another type of document.

Mr. CASTRO. Certainly, Mr. Dunlap, would you agree that when there is photo ID passed or voter ID passed there are some legitimate voters who are not going to be able to vote because they don't have the ID with them?

Mr. DUNLAP. That is precisely why the Maine legislature rejected that very piece of legislation and why the study committee said that it would be a disenfranchising force. We do require photo ID to register to vote, but not to access an actual ballot at the polls.

Mr. CASTRO. And do you know of any estimates about the percentage of people that might be denied their legitimate right to vote because of these laws?

Mr. DUNLAP. It would probably be fairly significant. It could run 5 to 10 percent.

Mr. CASTRO. OK. So let me ask any of you this: Do you think that the argument here is that the President's executive action may cause undocumented folks to vote? Do you think these folks are more patriotic than, in Kansas, 61 percent of your Kansans? I guess what I mean to say is you really think that these folks are so patriotic and so wanting to go vote that they want so much to go vote more than 61 percent of the Kansans who didn't want to go vote?

Mr. KOBACH. Let me tell you a story about a specific individual.

Mr. CASTRO. No, please answer my question. If you are going to, yes or no?

Mr. KOBACH. It is directly in answer to your question. These individuals may vote for some of the same reasons that you are suggesting. A woman in Wichita, an alien, voted—

Mr. CASTRO. Do you think—I need to reclaim my time.

Mr. KOBACH. She voted multiple times. She was a green card holder with an application for U.S. citizenship—

Mr. CASTRO. Mr. Chairman, I asked a direct question for which the witness won't give me a direct answer.

Mr. KOBACH. I am trying to answer your question. The answer is she wanted her U.S. citizenship application and she said, when asked, she voted as a green card holder because she thought it would increase the chances of her becoming and accepted as a U.S. citizenship. So it was an error.

Mr. CASTRO. But, Mr. Kobach, you believe that—

Mr. KOBACH. So many are motivated to vote.

Mr. CASTRO [continuing]. There are so many undocumented folks there who just want to vote so much in Kansas that this is going to be a problem?

Mr. KOBACH. Some, like her, are in error, and they think voting will help them. Others are manipulated, like those in Seward County, Kansas, in my written testimony, but evidently you haven't looked at it.

Mr. CASTRO. OK, so you feel there are so more patriotic than 61 percent of your Kansas out there, that they are just dying to go vote. OK.

Mr. KOBACH. I doubt that the participation rate would exceed 61 percent.

Mr. CASTRO. Now, let me ask you this.

Mr. Dunlap, do you think that there are more people who are going to be legitimately disenfranchised, Americans, legitimate voters who have the right to vote, disenfranchised by laws passed in Kansas and other places, or are there going to be more undocumented folks who actually turn out and vote? Which number do you think would be higher?

Mr. DUNLAP. Those denied access to the process, sir.

Mr. CASTRO. Yet, these were laws that were very graciously passed in places like Kansas and Tennessee, which the Government Accounting Office has said cost the vote for a lot of people. I know you have disputed that report, but the GAO has said that it was solid and credible.

Mr. KOBACH. The GAO report was before the 2014 election. We now have empirical evidence that the voter participation went up after we put photo ID in.

Mr. CASTRO. So you think that putting roadblocks in front of people is OK, right, even though legitimate voters, everybody agrees that are going to be some legitimate voters who aren't going to be able to vote. Even you agree with that, right?

Mr. KOBACH. No, I don't agree with that.

Mr. CASTRO. Not a single legitimate voter is going—

Mr. KOBACH. Not a single one. We have been unable to find a single person—

Mr. CASTRO. Wow. That is a remarkable answer, that you won't even admit a single person is not going to be able to vote.

Mr. KOBACH. Every person can get a free non-photo ID—

Mr. CASTRO. So there are going to be more legitimate people, right, who can vote, there are going to be more legitimate people that can vote because of the laws that you all passed versus these undocumented folks that you are worried about today.

Mr. KOBACH. Not a single U.S. citizen or other legitimate voter, I assume you are talking about someone who didn't bring their driver's license with them.

Mr. CASTRO. No.

Mr. KOBACH. Not a single legitimate voter has been denied the right to vote in Kansas, and we have many cases——

Mr. CASTRO. Mr. Kobach, you are being unreasonable.

Mr. DESANTIS. The gentleman's time has expired.

Mr. CASTRO. Thank you, Chairman.

Mr. JORDAN. Mr. Chairman, could I just do one quick question for Mr. Kobach?

Mr. DESANTIS. The chair recognizes the gentleman.

Mr. JORDAN. I just want to be clear. It was tough for us to hear exactly what you said. So in the 2010 non-Presidential election you had a percentage of Kansas that showed up and voted. Between 2010 and 2014 you implemented a photo ID requirement. And if I heard you, I think you said in 2014 the percent of Kansas who showed up to vote went up, is that accurate?

Mr. KOBACH. That is accurate. The percentage went up and the raw number of voters who voted in 2014 set an all-time State record, and that, again, was after we implemented a photo ID requirement.

Mr. JORDAN. I yield back, Mr. Chairman.

Mr. DESANTIS. The ranking member, the chair recognizes.

Mr. LYNCH. Thank you, Mr. Chairman. I have a report here entitled, Truth in Immigration: The Myth of Widespread Non-Citizen Voting, by the Maldef Legal Defense and Education Fund, that I would ask to have submitted to the record.

Mr. DESANTIS. Without objection, it will be so entered.

Mr. DESANTIS. Well, let me thank the witnesses for your time and providing your input. I think part of the issue that we are seeing emanating from what the President did is we are really in unchartered law. I mean, this is kind of a law-free zone. The work permits that are issued are not contemplated by the statute; the different benefits have never been passed by Congress. So this is going to trickle down to how that new status that has been created by executive fiat is going to interact with State laws, and I think it is going to be confusing and I think that the President was wrong to do what he did, and I don't think that that is how the system is supposed to operate.

But I do appreciate all of you for coming here today.

This hearing is now adjourned.

[Whereupon, at 4:28 p.m., the subcommittee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

February 12, 2015

Opening Statement of Congressman Joaquin CastroSubcommittee on National Security and the Subcommittee on Health Care, Benefits and Administrative Rules of
the Committee on Oversight and Government Reform

Joint Hearing on “The President’s Executive Actions on Immigration and Their Impact on Federal and State Elections”

Thank you, Mr. Chairman, and thank you to all of the members here today for giving me the opportunity to join this important hearing. I, like you, believe preserving the integrity of elections is one of the most fundamental, Constitutional obligations of our government. What I do not agree with is that the impetus for this hearing was the President’s recent executive actions on immigration. The problems of voter fraud and its impacts on federal and state elections do not stem from the President and his efforts to reform our country’s broken immigration system. Many federal and state election challenges are in fact due to certain governors and their dictatorial actions that most urgently threaten the rights of voters in the United States. Stringent state laws are what decrease voter turnout and deter eligible voters from going to the polls.

Take my state of Texas, for example. Texas has become notorious for its restrictive voting laws. In 2011, the Republican-majority legislature passed a law limiting acceptable proof of identification for voting eligibility to seven very specific forms of ID on the basis of voter fraud prevention. Yet evidence shown during a two-week trial this past September proved that over the last 14 years there were only two cases of in-person voter fraud out of the more than 62 million votes cast in the state during that time. If the Texas voter ID laws were struck, it could spare an estimated 13.6 million registered Texas voters from needing one of seven kinds of photos identification to cast a ballot. The Department of Justice estimates that more than 600,000 of those voters – mostly African Americans and Hispanics – now lack a legally acceptable ID for voting. The state argued that these laws prevent voter fraud. But in reality, all they did was render lawful citizens voiceless and compromise the integrity of federal and state elections.

Texas isn’t unique. The Government Accountability Office (GAO) found voter turnout declined in other states due to changes in voter ID laws. Consequently, last year I asked the GAO to formally investigate how Texas’ voting laws affect voter turnout, costs of IDs, voter outreach efforts, and instances of in-person fraud in Texas. Shortly after submitting that request, Ranking Member Cummings and I together requested a nation-wide assessment of voter ID laws and their effects on voter turnout. The GAO accepted our request for analysis.

I felt compelled to be here because there are real problems, like those in Texas, that we should be addressing. With regard to the President’s executive actions on immigration, none of these actions change voter eligibility requirements. Nor do these executive immigration actions change any penalties that non-citizen voters will face if they falsely claim U.S. citizenship.

The essence of democracy rests in the right to vote — when that right is threatened, so are American democracy and our freedom. In a country that prides itself on the equality and liberty promised to its people, we cannot allow rogue governors to bar segments of the population from engaging in the democratic process. Our first impulse should be one of inclusion, not exclusion.

There are problems in our elections today and we all can agree that we want our elections held in a fully democratic and lawful manner. I look forward to the final analysis from GAO on voter turnout in relation to stringent voter ID laws. And I hereby ask the Committee that, upon the issuance of the GAO report on voter turnout, we examine states’ actions across the nation – that’s why I’m here today.

It is my hope that if the Committee deems it necessary to investigate the President’s actions and their impact on elections, you feel equally compelled to investigate states and how their voting laws affect elections. Additionally, I hope the Chairman and Ranking Member will allow me to participate in that hearing as well. The question of voter fraud deserves our most thorough examination, not simply political posturing.



HOUSE OF REPRESENTATIVES
WASHINGTON, D. C. 20515

MARCIA L. FUDGE
11TH DISTRICT OF OHIO

**STATEMENT FOR THE HEARING RECORD OF CONGRESSWOMAN MARCIA L. FUDGE (OH)
FOR THE U.S. HOUSE OVERSIGHT AND GOVERNMENT REFORM COMMITTEE
JOINT HEARING ON "THE PRESIDENT'S EXECUTIVE ACTIONS ON IMMIGRATION AND THEIR
IMPACT ON FEDERAL AND STATE ELECTIONS"**

Thursday, February 12, 2015

Good Morning, Chairman Chaffetz and Ranking Member Cummings. Thank you for allowing me to submit this statement for the hearing record. My name is Congresswoman Marcia L. Fudge and I represent the 11th Congressional District of Ohio. The topic being discussed at today's hearing is of great concern to me as I am keenly aware of the direct impact election law changes are having on the people I represent.

In a recent letter to President Barack Obama, Ohio Secretary of State Jon Husted expressed his concern that the President's *Immigration Accountability Executive Actions* pose a threat to the integrity of elections in Ohio and throughout the nation. He would have anyone who will listen believe increased access by a non-citizen to a driver's license or other form of valid, state-sanctioned identification increases the potential for voter fraud. Secretary Husted presents a hypothetical fear that is not grounded in fact or precedent.

By his own admission, voter fraud in Ohio is rare. In fact, it is *extremely* rare. Following the 2012 Presidential Election, the Ohio Secretary of State's office determined 291 non-citizens were registered to vote and 17 had actually cast ballots—that's 17 out of more than 5.6 million votes cast.

Mr. Husted's lack of perspective is evident in other ways as well. Under federal and state law in Ohio, it is a felony to falsely attest on a voter registration form that one is a citizen of the United States, citizenship being a requirement to register. The Secretary's letter to the President makes no reference to the deterrent effect of current law. The fact there have been so few cases of non-citizens attempting to register and vote in my state demonstrates these laws are working. They are working very well. Further remedies to prevent non-citizens from voting are not needed. The greater threat to the integrity of elections are the state elected officials who fail to adequately safeguard the right of all eligible citizens to access the ballot box. The State of Ohio cannot be proud of its recent record in this regard.

Since 2011, new regulations and legislation have curtailed early voting, reduced voting hours, and eliminated the ability of Ohioans to register and vote on the same day. A lawsuit was filed in 2014 to reverse these changes, and after reviewing testimony, research and studies presented into evidence, U.S. District Judge Peter Economus and the U.S. Sixth Circuit Court of Appeals found the curtailment of early voting had an unconstitutional, disparate impact on African-Americans in Ohio. Unwilling to accept that result, Secretary Husted successfully pursued a stay by the U.S. Supreme Court to overturn lower court rulings on Ohio election law changes. The Northeast Media Group, owner of the Cleveland Plain Dealer referred to the Supreme Court ruling as "highly disappointing, even grotesque." I agree. I have heard from voters in my district who described the hardship of losing the ability to register and vote in a single visit.

I urge the Committee to ignore hype and hypothesis. We don't need more laws to vanquish non-existent threats. Please join me in working to protect the right of all American citizens to exercise their right to vote.



Jon Husted
Ohio Secretary of State

180 East Broad Street, 16th Floor
Columbus, Ohio 43215
Tel: (877) 767-6446 Fax: (614) 644-0649
www.OhioSecretaryofState.gov

January 27, 2015

The Honorable Barack Obama
President of the United States
Attn: Valerie Jarrett - Senior Advisor and Assistant to the President
for Intergovernmental Affairs and Public Engagement
The White House
West Wing
1600 Pennsylvania Avenue, N.W.
Washington, DC 20502

Dear Mr. President:

I write regarding the consequences the recent *Immigration Accountability Executive Actions* may have on the administration of federal and state elections. Consistent with federal and state law, states are responsible for ensuring the integrity of our elections. As a swing state with access to voting that is already expansive, Ohio takes this responsibility very seriously. In spite of our diligence maintaining accurate voter registration rolls, however, the recent executive actions could jeopardize their integrity by making it much easier for people who are not U.S. citizens to illegally register and cast ballots. As the chief elections official for the state of Ohio, I simply cannot allow this expanding loophole to go unaddressed.

The source of the problem is that the recent executive actions enable millions of non-U.S. citizens to obtain valid Social Security numbers and driver's licenses. Under federal law, any person with a valid Social Security number or driver's license can register to vote, so long as they attest to their eligibility to do so.¹ As a result, the recent executive actions dramatically expand the opportunities for illegal voter registrations in Ohio and other states by non-citizen voters who have valid forms of identification and who willingly or negligently affirm their eligibility to vote. This problem is especially serious in the context of third-party voter registration drives, which are prevalent in Ohio and other states. Such drives occur outside of the presence of election officials who could explain that citizenship—not mere lawful presence—is a fundamental requirement for registering to vote and who can caution non-citizens against erroneous attestations.

In short, by enabling millions of non-citizens to access valid forms of the types of identification required to register to vote, the recent executive actions have increased the risk that non-citizens may illegally register to vote and vote in our elections.

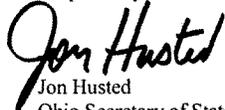
The debate over voter fraud and voter access already breeds significant hyperbole from across the political spectrum. Your recent executive actions will invite even more, and have very real and lasting implications for the integrity of our elections.

¹ 52 USC 21083(b)(4)(A).

Voter confidence is paramount in all states, but magnified in swing states where our democratic system is put under the national and world microscope. If the recent executive actions remain in force, it is imperative that state elections officials be given real-time access to accurate, searchable, electronic databases of non-citizens who have valid Social Security numbers in order to distinguish between citizens and lawfully-present non-citizens.

If you follow through with implementation of the executive actions, I ask that your administration work with us to minimize the impact on the integrity of our elections and to ensure only eligible voters participate in state and federal elections.

Respectfully,



Jon Husted
Ohio Secretary of State

cc: The Honorable John Boehner
The Honorable Steve Chabot
The Honorable Patrick Tiberi
The Honorable Michael Turner
The Honorable Jim Jordan
The Honorable Bob Latta
The Honorable Bob Gibbs
The Honorable Bill Johnson
The Honorable Jim Renacci
The Honorable Steve Stivers
The Honorable David Joyce
The Honorable Brad Wenstrup
The Honorable Marcy Kaptur
The Honorable Tim Ryan
The Honorable Marcia Fudge
The Honorable Joyce Beatty

The Honorable Sherrod Brown
The Honorable Rob Portman

Kansas Voter Registration Instructions

For further information, contact the Office of the Secretary of State, 1-800-262-VOTE (8683) V/TTY. This form is available at www.sos.ks.gov.

You can use this application to:

- register to vote in Kansas
- change your name, address, or affiliation with a political party

To register to vote, you must:

- be a U.S. citizen and a resident of the state of Kansas.
- have reached the age of 18 years before the next election.
- have received final discharge from imprisonment, parole, or conditional release if convicted of a felony.
- have abandoned your former residence and/or name.

How to register to vote:

- Return your completed application to your county. Addresses are on the back of this application. Your county election officer will mail you a notice when your application has been processed.
- Voter registration closes 21 days before any election. In order to be eligible to vote in that election, your application must be postmarked on or before that date.
- If you decline to register to vote, that fact will remain confidential and will be used for voter registration purposes only. If you do register to vote, the office where you apply will be kept confidential and will be used for voter registration purposes only.
- If this form is incomplete, it may be rejected.

Identification number requirements

Enter your current Kansas driver's license number or nondriver's identification card number. If you do not have either one, enter the last four digits of your Social Security number. If you do not have any of these numbers, write "none" in the box. The number will be used for administrative purposes only and will not be disclosed to the public. K.S.A. 25-2309

Proof of U.S. citizenship

If you are registering for the first time in Kansas, you must submit proof of United States citizenship. You may provide a copy on paper or electronically, or you may show the document to an election officer or official registrar. The following is a partial list of acceptable documents:

- Birth certificate that verifies U.S. citizenship
- U.S. passport (may be expired)
- U.S. naturalization documents or the number of the certificate of naturalization
- Bureau of Indian Affairs card number, tribal treaty number or tribal enrollment number
- U.S. hospital record of birth indicating place of birth in the U.S.
- U.S. military record of service showing the applicant's name and U.S. birthplace

For a list of acceptable documents, visit <http://www.govotervid.com>. If you do not have any of the documents, you may appeal to the state election board.

Rev. 12/12/12 to

Print in blue or black ink, fold on the center line, seal, and return.

Kansas Voter Registration Application

Warning: If you submit a false voter registration application, you may be convicted and sentenced to up to 17 months in prison.

➔ **Qualifications: If you mark "no" in response to either Question 1 or 2, do not complete this form.**

1. Are you a citizen of the United States of America? Yes No

2. Will you be 18 years of age on or before Election Day? Yes No

Last Name (please print)		First Name		Middle	Jr., Sr., II, III	<input type="checkbox"/> Male <input type="checkbox"/> Female
Residential Address (include apt. or space number)			City	County	Zip	
Mailing Address (if different than residential address)			City	Zip	Date Residence Established (MM/DD/YY)	
Birth Date (MM/DD/YY)	Daytime Phone Number (if available)	Naturalization Number (if applicable)		Driver's License Number or Last 4 Social Security (see instructions)		
Party Affiliation: Choose one of the following: <input type="checkbox"/> Democratic <input type="checkbox"/> Republican <input type="checkbox"/> Libertarian <input type="checkbox"/> Not affiliated with a party						
Complete if previously registered (please print)		Previous Name		Previous Residential Address (Street, City, State, Zip, County)		
Signatures: I swear or affirm that I am a citizen of the United States and a Kansas resident, that I will be 18 years old before the next election, that if convicted of a felony I have had my civil rights restored, that I have abandoned my former residence and/or other name, and that I have told the truth on this application.						
Signature				Date (MM/DD/YY)		

For office use only: Ward _____ Pct. _____ School Dist. _____ Member Dist. _____
Sen. _____ Rep. _____ CoComm _____ Section _____ Township _____ Range _____

Voter Registration and Information Update Form

Please read instructions carefully. Please type or print clearly with blue or black ink.

For further information, you may consult the Secretary of State's website at: www.OhioSecretaryofState.gov or call 1-877-767-6446.

Eligibility

You are qualified to register to vote in Ohio if you meet all the following requirements:

1. You are a citizen of the United States.
2. You will be at least 18 years old on or before the day of the general election.
3. You will be a resident of Ohio for at least 30 days immediately before the election in which you want to vote.
4. You are not incarcerated (in jail or in prison) for a felony conviction.
5. You have not been declared incompetent for voting purposes by a probate court.
6. You have not been permanently disenfranchised for violations of election laws.

Use this form to register to vote or to update your current Ohio registration if you have changed your address or name.

NOTICE: This form must be received or postmarked by the 30th day before an election at which you intend to vote. You will be notified by your county board of elections of the location where you vote. If you do not receive a notice following timely submission of this form, please contact your county board of elections.

Numbers 1 and 2 below are required by law. You must answer **both** of the questions for your registration to be processed.

Registering in Person

If you have a current valid Ohio driver's license, you must provide that number on line 10. If you do not have an Ohio driver's license, you must provide the last four digits of your Social Security number on line 10. If you have neither, please write "None."

Registering by Mail

If you register by mail and do not provide either an Ohio driver's license number or the last four digits of your Social Security number, you must enclose with your application a copy of one of the following forms of identification:

Current and valid photo identification, a military identification, or a current (within the last 12 months) utility bill, bank statement, paycheck, government check or government document (other than a notice of voter registration mailed by a board of elections) that shows your name and current address.

Residency Requirements

Your voting residence is the location that you consider to be a permanent, not a temporary, residence. Your voting residence is the place in which your habitation is fixed and to which, whenever you are absent, you intend to return. If you do not have a fixed place of habitation, but you are a consistent or regular inhabitant of a shelter or other location to which you intend to return, you may use that shelter or other location as your residence for purposes of registering to vote. If you have questions about your specific residency circumstances, you may contact your local board of elections for further information.

Your Signature

In the area below the arrow in Box 14, please write your cursive, hand-written signature or make your legal mark, taking care that it does not touch the surrounding lines so when it is digitally imaged by your county board of elections it can effectively be used to identify your signature.

Please see information on back of this form to learn how to obtain an absentee ballot.

WHOEVER COMMITS ELECTION FALSIFICATION IS GUILTY OF A FELONY OF THE FIFTH DEGREE.

FOLD HERE

I am: Registering as an Ohio voter Updating my address Updating my name

1. Are you a U.S. citizen? <input type="checkbox"/> Yes <input type="checkbox"/> No
2. Will you be at least 18 years of age on or before the next general election? <input type="checkbox"/> Yes <input type="checkbox"/> No
If you answered NO to either of the questions, do not complete this form.

3. Last Name	First Name	Middle Name or Initial	Jr., II, etc.
4. House Number and Street (Enter new address if changed)	Apt. or Lot #	5. City or Post Office	6. ZIP Code
7. Additional Mailing Address or P.O. Box (if necessary)		8. County (where you live)	
9. Birthdate (MO-DAY-YR) (required)	10. Ohio Driver's License No. OR Last Four Digits of Social Security no. (one form of ID required to be listed or provided)	11. Phone No. (voluntary)	
12. PREVIOUS ADDRESS IF UPDATING CURRENT REGISTRATION - Previous House Number and Street			
Previous City or Post Office	County	State	
13. CHANGE OF NAME ONLY Former Legal Name		Former Signature	
14.			
I declare under penalty of election falsification I am a citizen of the United States, will have lived in this state for 30 days immediately preceding the next election, and will be at least 18 years of age at the time of the general election.		Your Signature ↓ <div style="border: 1px dashed black; height: 40px; width: 100%;"></div>	Date / / MO DAY YR

FOR BOARD USE ONLY
SEC4010 (Rev. 6/14)
City, Village, Twp.
Ward
Precinct
School Dist.
Cong. Dist.
Senate Dist.
House Dist.

To ensure your information is updated, please do the following:

1. Print this form.
2. Complete all required fields.
3. Sign and date your form.
4. Fold and insert your form into an envelope.
5. Mail your form to your county board of elections. For your county board's address please visit www.OhioSecretaryofState.gov/boards.htm.

If you have additional questions, please call the office of the Ohio Secretary of State at 877-SOS-OHIO (767-6446).

HOW TO OBTAIN AN OHIO ABSENTEE BALLOT

You are entitled to vote by absentee ballot in Ohio without providing a reason. Absentee ballot applications may be obtained from your county board of elections or from the Secretary of State at: www.OhioSecretaryofState.gov or by calling 1-877-767-6446.

OHIO VOTER IDENTIFICATION REQUIREMENTS

Voters must bring identification to the polls in order to verify identity. Identification may include current and valid photo identification, a military identification, or a copy of a current (within the last 12 months) utility bill, bank statement, government check, paycheck, or other government document, other than a notice of an election or a voter registration notification sent by a board of elections, that shows the voter's name and current address. Voters who do not provide one of these documents will still be able to vote by providing the last four digits of the voter's Social Security number and by casting a provisional ballot pursuant to R.C. 3505.181. For more information on voter identification requirements, please consult the Secretary of State's website at: www.OhioSecretaryofState.gov or call 1-877-767-6446.

**WHOEVER COMMITS ELECTION FALSIFICATION IS GUILTY
OF A FELONY OF THE FIFTH DEGREE.**

<p style="text-align: center;">MAINE VOTER REGISTRATION APPLICATION</p>  <p style="text-align: center;">Federally required questions:</p> <p>♦ Are you a citizen of the United States of America? <input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>♦ Will you be 18 years of age on or before Election Day? <input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>(If you checked "no" in response to either of these questions, do not complete this form.)</p>	<p style="text-align: center;">PARTY AFFILIATION</p> <p>This portion <u>must</u> be completed.</p> <p><input type="checkbox"/> Democratic</p> <p><input type="checkbox"/> Green Independent</p> <p><input type="checkbox"/> Republican</p> <p><input type="checkbox"/> Other _____</p> <p><input type="checkbox"/> I do not wish to enroll in a political party at this time (designated as "Unenrolled")</p>
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LAST NAME	FIRST NAME	MIDDLE NAME	DATE OF BIRTH MM / DD / YYYY
STREET OR LOCATION ADDRESS (Where you live)			
(STREET NAME AND NUMBER, <u>NOT</u> A P.O. BOX)		CITY, TOWN, PLANTATION OR TOWNSHIP	
CURRENT MAILING ADDRESS (If different from address above)			
NUMBER AND STREET OR P.O. BOX, etc.		CITY/TOWN	ZIP CODE
PREVIOUS REGISTRATION ADDRESS (Complete or write "none" below)			TELEPHONE (Optional)
CITY/TOWN	COUNTY	STATE ZIP CODE	

COMPLETE BOTH SIDES OF THIS CARD – PLEASE PRINT

MAINE VOTER REGISTRATION APPLICATION

- COMPLETE BOTH SIDES OF THIS CARD -

CHANGE OF NAME (Prior legal name, if applicable)			VOTER ID: By federal law, NEW Maine voters must provide an applicable ID number: 1. Your Maine driver's license/ Maine State ID; or 2. If you don't have a Maine driver's license/ Maine State ID, the last 4 digits of your Social Security number; or 3. Write "none" if you don't have either Maine ID.
LAST	FIRST	MIDDLE	
SIGN AND DATE THIS CARD. Under penalty of law, I certify that the information on this card is true.			
Signature of Applicant on line above		Date on line above	

REGISTRAR'S USE ONLY: Date Received: _____ Ward-Precinct: _____ - _____

Source of Registration: In Person By Mail Agency BMV Voter Registration Drive/3rd Person

Type of Registration:

NEW Maine Voter Registration Form of Proof for ID: _____ for Residency: _____

Change of Existing Voter Registration (check boxes below) Form of Proof for Residency: _____

Address Change to new municipality Address Change within municipality Party Enrollment Change

Name Change Other Change _____

Duplicate Application (no changes made)

INSTRUCTIONS TO VOTERS: Failure to complete this entire application may prevent registration.

- Deliver or mail this completed card to your municipal registrar or to the Division of Elections: #101 State House Station, Augusta, ME 04333-0101. This properly completed application must be received by the municipal registrar 21 days or more before an election. **If less than 21 days before an election, you must register in person.**
- **If you are a NEW Maine voter and mail this card,** you must include a photocopy of your Maine driver's license, or a utility bill or a government document that shows your name and address.
- For election information, call 207-624-7650 or visit www.maine.gov/sos/cec/elect/.

(rev. 08/08)

Truth in Immigration

The Myth of Widespread Non-Citizen Voting

A Response to the Heritage Foundation

August 20, 2008

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I. Introduction

In a recent segment, CNN anchor Lou Dobbs told viewers that substantial evidence suggests that large numbers of non-citizens, including undocumented immigrants, are voting in federal elections and could be the deciding factor in November's elections. The story primarily cites a recent report published by the Heritage Foundation. The report is written by former recess-appointed FEC Commissioner Hans von Spakovsky, whose troubling record on voting rights caused him to withdraw his name from consideration for a permanent FEC seat. Von Spakovsky's report contains gross distortions and represents an attempt to support a policy agenda that would disenfranchise many U.S. citizens.

Less than a minute into the CNN report, Lou Dobbs makes a statement that summarizes the prevailing theme of von Spakovsky's report:

There's startling new evidence tonight that our democracy is at risk on a number of fronts, including a new study showing that non-citizens, including illegal aliens, are voting in our elections . . . If this year's presidential election remains as close as it appears to be now, this election could in fact be decided by fraud.¹

Reality, however, does not accord with this analysis. Far from being a problem that could swing elections, non-citizen voting is virtually non-existent and allegations of it are peddled by anti-immigrant groups and others bent on promoting a discriminatory, anti-democratic agenda.

First, this ***Truth in Immigration*** report will scrutinize von Spakovsky's cited examples of non-citizen voting in order to dispel the notion that non-citizens regularly vote. Second, this report will address how non-citizens have strong incentives not to vote

¹ *Lou Dobbs Tonight* (CNN Broadcast, June 16, 2008) available at <http://www.cnn.com/video/#/video/bestoftv/2008/07/16/ldt.wian.non.citizen.voting.cnn>.

in federal elections. After addressing the virtual non-existence of non-citizen voting, this report will discuss legitimate threats to U.S. voting systems that von Spakovsky ignores. Fourth, we will examine von Spakovsky's harmful policy recommendations. Finally, this report will briefly speculate as to why von Spakovsky would become so preoccupied in the first place with a threat that is virtually non-existent.

II. Von Spakovsky's Argument and Skewed Evidence

Von Spakovsky's claims about widespread non-citizen voting unravel upon close examination. Regarding it as an "enduring problem," von Spakovsky portrays non-citizen voting as endemic to our electoral system:

*The evidence is indisputable that aliens, both legal and illegal, are registering and voting in federal, state, and local elections.*²

Instead of substantiating this claim with significant and compelling evidence, however, von Spakovsky relies upon speculation and skewed evidence to deliver a message that harms our democracy.

A. Egregious Misreading of GAO Study

Von Spakovsky starts his report by citing a 2005 Government Accountability Office (GAO) report that he suggests finds "that up to 3 percent of 30,000 individuals called for jury duty from voter registration rolls over a two-year period in just one U.S. district were not U.S. citizens."³ Arguing that up to 3 percent of 30,000 voters (900 voters) would be enough to affect election results, von Spakovsky suggests that the GAO study demonstrates a major impact on U.S. elections from widespread non-citizen voting.

² Hans A. von Spakovsky, *The Threat of Non-Citizen Voting*, Legal Memorandum No. 28, The Heritage Foundation, available at <http://www.heritage.org/Research/LegalIssues/lm28.cfm>.

³ *Id.* at 1.

The GAO study as a whole belies von Spakovsky's assertion, however. The 2005 report features data from 14 U.S. district courts. GAO researchers asked staff associated with these courts for information about the number of individuals who were called for jury service and responded that they were non-citizens.⁴ These researchers found that the "AOUSC officials and federal jury administrators we spoke with generally did not have exact data on the number of people called for jury service that responded that they were non-citizens."⁵ Due to the lack of concrete data, 6 of the 14 gave no information to the GAO. Of the remaining 8 jurisdictions, *4 of them had never witnessed non-citizens who had been called to serve on a jury.*⁶ Ten of the 14 district courts surveyed, then, could offer no evidence whatsoever of non-citizens in jury pools. Ignoring this, von Spakovsky presents isolated data from just one of these fourteen jurisdictions. Further, 3 of the 4 courts that did report non-citizens in their jury pools estimated that non-citizens comprised, respectively, approximately 1%, 0.158%, and 0.01% of the jury pool.⁷ Von Spakovsky, in his attempt to manufacture concern about a nonexistent crisis, simply ignores key elements of the GAO report that do not support his hypothesis that non-citizens threaten the integrity of U.S. elections.

It should be noted, furthermore, that being called to jury duty is not the same thing as voting fraudulently in an election (despite Von Spakovsky's suggestion that jury pools are proxies for voter participation). As noted in the GAO report, several of the district courts' jury pools contained names drawn from state identification or driver's license records in addition to voter registration lists. Even assuming that non-citizens in

⁴ Government Accountability Office, Report to Congressional Requesters: *Additional Data Could Help State and Local Elections Officials Maintain Voter Registration Lists*, GAO-05-478, at 4 (June 2005).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* Federal jury administrators in the different districts provided monthly or yearly percentages.

jury pools appear on voter registration rolls, that wouldn't establish that a) these voters have ever voted in federal elections or b) that these voters voted while knowing they were ineligible (i.e., voted fraudulently). Even von Spakovsky's skewed evidence is only significant if one makes these unsupported assumptions.

B. Unsubstantiated Examples of Illegitimate Election Results

As one of his primary examples of non-citizen voters influencing U.S. elections, von Spakovsky cites the 1996 Congressional race in California between Republican Bob Dornan and Democrat Loretta Sanchez. Sanchez prevailed in this election by fewer than 1,000 votes, and Dornan contested the results. The House of Representatives then investigated whether invalid voters won the election for Sanchez. Von Spakovsky notes that the House Committee on Oversight and Government Reform ultimately dismissed the case, but suggests that the Committee did so only because it revealed just 624 non-citizen votes and 124 invalid absentee ballots. Von Spakovsky essentially ignores the Committee's conclusion that the Sanchez/Dornan race was not compromised and that non-citizens did not vote in significant numbers. Instead, he speculates, without offering supporting evidence, that votes from undocumented immigrants probably accounted for the remaining votes.⁸ What he fails to note, moreover, is that 372 of the disputed non-citizen votes *were cast by individuals who were officially sworn in as U.S. citizens before Election Day.*⁹

Most allegations of non-citizen voting, upon closer examination, likewise do not yield evidence of non-citizen voting. In the state of Washington in 2005, for instance, a

⁸ Von Spakovsky, *supra* n. 2, art 3.

⁹ Justin Levitt, *The Truth about Voter Fraud*, Brennan Center for Justice at NYU School of Law, 2007, at 19-20, available at <http://truthaboutfraud.org/pdf/TruthAboutVoterFraud.pdf>.

private citizen asked county officials to investigate 1,668 registered voters who had seemingly foreign names. To this day, none of these voters have turned out to be non-citizens.¹⁰ In 2001, Milwaukee journalists conducted a review of 370,000 voting records between 1992 to 2000. The journalists found only four cases of possible non-citizen voting, but it has never been established whether even these four voters cast invalid ballots.¹¹

These examples reflect broader trends. Certainly, isolated incidents of non-fraudulent voting by non-citizens do occur, if infrequently. In one well known case, for example, non-citizens engaged in the naturalization process had passed interviews with federal authorities and had received letters that started with the following message: “Congratulations, your application for citizenship has been approved.”¹² After receiving these letters, it appears that the non-citizen voters thought they could then vote even though they had not yet had an official naturalization ceremony.¹³ Isolated incidents such as this, however, are blown out of proportion and then become grist for complaints of widespread non-citizen voting. They do not reflect concerted efforts to improperly influence elections, and they simply do not threaten the integrity of our election systems.

C. Administrative Errors Often Explain Allegations

Concrete data shows that clerical errors and errors in data-collection occur more often than non-citizen voting. Poll books and registration rolls are often riddled with inaccurate information. Sometimes errors are simple, featuring misspelled names

¹⁰ *Id.* at 19.

¹¹ *Id.* at 19.

¹² Michael G. Wagner and Nancy Cleeland, *D.A. Drops Voter Probe after Indictments Rejected*, L.A. Times, Dec. 20, 1997, at A1, available at <http://articles.latimes.com/1997/dec/20/news/mn-526>.

¹³ Justin Levitt, *supra* n. 9, at 18.

resulting in voters on one roll appearing on another roll.¹⁴ Such errors have sometimes fueled unwarranted allegations of non-citizen voting.¹⁵ These kinds of mistakes obviously should not occur, but they do not serve as an appropriate basis for asserting false allegations of illegitimate voting.

Allegations of non-citizen voting also stem from ‘bad matching.’ Matching is the process by which voter registration rolls in different jurisdictions are compared to catch forms of invalid voting. Unfortunately, matching can be inaccurate or inconsequential. In addition to erroneous data compilation, partial matches may be mistaken for complete matches (e.g., equating Joe A. Smith and Joe B. Smith). In addition, even complete matches may be irrelevant when, for example, individuals share the same name and date of birth.¹⁶ As with clerical errors, incorrect matching also accounts for a number of false allegations of non-citizen voting.¹⁷

III. Deterrents to Non-Citizen Voting

A. Criminal Penalties

Von Spakovsky ignores the fact that non-citizens lack a compelling reason to vote and risk severe criminal penalties under current law. Particularly in the case of undocumented immigrants, registering with the federal government to vote simply does not make sense. Federal law mandates strict penalties for those who register while knowing they are ineligible to vote in federal elections.¹⁸ Premeditated attempts to commit voter fraud carry with them serious penalties—including a fine up to \$10,000 and

¹⁴ *Id.* at 7.

¹⁵ *Id.* at 18.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ 42 U.S.C. § 1973(gg)-10 (2008).

up to 10 years in prison—that non-citizens do not want to risk. Violation of federal election law, moreover, could lead to the deportation of non-citizens—including legal permanent residents. As will be discussed below, moreover, non-citizen voting is not synonymous with voter fraud, but the point is that non-citizens would be wary of doing anything that could lead to lengthy legal investigations, criminal penalties, and possible deportation.

B. NVRA

Federal law currently mandates ways for election authorities to prevent human error that may lead to charges of non-citizen voting. States are required by the Help America Vote Act of 2002 (HAVA) to create efficient, accurate computerized databases of registered voters.¹⁹ Implementing these improved databases mandated by federal law will help election officials catch many of the errors that currently affect registration rolls.

In addition to HAVA, the National Voter Registration Act of 1993 (NVRA) also provides election authorities with tools to run better elections. By improving the accessibility and ease of voter registration, NVRA ensures that eligible voters have their opportunity to become engaged in the voting process. NVRA also mandates that states improve their registration databases by purging voters who have moved to another jurisdiction or who have otherwise become ineligible to vote within a particular location.²⁰ In his study, von Spakovsky targets NVRA, arguing that the law's mechanisms for improving voter registration help non-citizens vote.²¹ He singles out Section 5 of the Act, known informally as the Motor Voter provision, which allows

¹⁹ 42 U.S.C. § 15483 (2007).

²⁰ 42 U.S.C. § 1973gg (2008).

²¹ Von Spakovsky, *supra* n. 2, at 8-9.

individuals to register to vote at the same time they acquire a driver's license.²² He argues that numerous non-citizens, including undocumented individuals, become registered voters when they get driver's licenses in states that grant them to non-citizens. In the end, however, von Spakovsky's assertion is unsupported by evidence. He merely speculates about the effects upon registration in Maryland and cites a mere 14 non-citizens in Utah who have registered to vote and have obtained a driver's license.²³ As such, von Spakovsky has hardly proven why NVRA's alleged "loopholes" could swing November's elections.

NVRA actually currently includes provisions that, if appropriately implemented, would address any threat presented by any non-citizens who may wish to vote. NVRA, for example, imposes strict penalties for those who commit voter fraud.²⁴ In light of this, it's not surprising that one prominent report has found that states' complaints about NVRA primarily focus on a lack of funding—not specific concerns about voter fraud or non-citizen voting.²⁵

IV. Actual Threats to Our Voting Systems

As discussed above, clerical/typographical errors and inaccurate matching account for a number of false allegations of non-citizen voting. Von Spakovsky does not acknowledge these systematic problems. Indeed, he displayed the narrowness of his focus at a recent hearing about lessons learned from the 2004 elections. Instead of giving actual testimony, von Spakovsky merely provided three articles. One of them, an article

²² 42 U.S.C. § 1973gg-3 (2008)

²³ Von Spakovsky, *supra* n. 2, at 9.

²⁴ 42 U.S.C. § 1973gg-10 (2008).

²⁵ *Securing the Vote*, Demos: A Network for Ideas and Action, 2003, at 25, available at http://www.demos.org/pubs/EDR_-_Securing_the_Vote.pdf.

about meeting the needs of military voters, reflects a noble cause but the other two addressed the supposed “threat” of non-citizen voting. Von Spakovsky, consequently, ignored the serious problems with our voting systems discussed below.

A. Voter Caging

Voter caging is a concrete problem, substantiated by actual data that von Spakovsky fails to acknowledge. Voter caging is the “practice of sending non-forwardable direct mail to registered voters and using the returned mail to compile lists of voters, called ‘caging lists,’ for the purpose of challenging their eligibility to vote.”²⁶ Voter caging efforts have occurred in many elections. In recent years, voter caging operations have targeted thousands and, in some cases, hundreds of thousands of voters in various states.²⁷ When individuals who did not return the direct mail eventually voted, opponents asserted that fraud had occurred. Few of these voters, however, turned out to be illegitimate.²⁸ This is not surprising in light of the fact that undelivered mail does not always mean that the intended recipient does not live at a certain address. As one example of this, Postal officials successfully hand-delivered 1.8 million surveys for the 1990 Census that initially got returned as undeliverable.²⁹ A more recent 2007 report found that 84,000 errors marred mailing information Chicago Postal workers used to deliver government records.³⁰ These examples indicate that returned mail may be perfectly deliverable and may not necessarily reflect evidence of ineligible voters.

Furthermore, federal law explicitly prohibits invalidation of voter registration

²⁶ Teresa James, *Caging Democracy: A 50-Year History of Partisan Challenges to Minority Voters*, Project Vote, Sept. 2007, at 3.

²⁷ *Id.* at 16-25.

²⁸ *Id.*

²⁹ Justin Levitt, *supra* n. 9, at 11.

³⁰ *Id.*

merely because mail has not been returned. Except for certain exceptions,³¹ the National Voter Registration Act (NVRA) states that a voter cannot be removed from a registration roll unless (1) the voter establishes in writing that he or she has moved out of a particular jurisdiction and (2) the voter does not respond to mail from *election officials* and then does not vote in two successive federal elections.³²

As the November elections approach, voter caging presents a greater threat to U.S. democracy than non-citizen voting. Kris Kobach, the current leader of the Kansas Republican Party, wrote in a 2007 e-mail: “To date, the Kansas GOP has identified and caged more voters in the last 11 months than the previous two years!”³³ The fact that the current head of a state political party recently boasted about his success in voter caging is deeply troubling, yet von Spakovsky ignores this in favor of an exclusive focus on unsupported claims of widespread non-citizen voting.³⁴

B. Poll Workers’ Perceptions of Latino Voters

Von Spakovsky’s misleading study and Dobbs’s equally misleading report could cause poll workers to perceive a threat of non-citizen voting. This would be very unfortunate because, overall, the 1.4 million poll workers in the country provide essential assistance to our electoral process. Creating unsubstantiated fears of non-citizen voting could compound current problems poll workers face. Jonah Goldman, Director for the

³¹ These exceptions concern convicted felons, dead individuals, and the mentally challenged.

³² 42 U.S.C. 1973gg 6(d)

³³ Posting of KU Blue to Blue Tide Rising, Kobach admits top coordinated voter suppression, <http://bluetiderising.blogspot.com/2007/12/kobach-admits-to-coordinated-voter.html> (Dec. 20, 2007, 5:43PM).

³⁴ It is worth noting that Kobach is also closely associated with the Immigration Reform Law Institute (IRLI). The IRLI is the legal arm of the DC-based Federation for American Immigration Reform (FAIR), a prominent anti-immigrant organization that has been designated as a “hate group” by the Southern Poverty Law Center, an organization that the FBI cites as a credible source on hate groups and hate crimes. *See* <http://www.splcenter.org/intel/map/type.jsp?DT=27> (last visited Aug. 8, 2008); <http://www.fbi.gov/hq/cid/civilrights/hate.htm>.

National Campaign for Fair Elections at the Lawyers' Committee for Civil Rights, testified in May, 2008 about such obstacles: "In every state we [the National Campaign] ran a program during this cycle and in every program we have run in the past, [the National Campaign] uncover[ed] voters who were turned away because poll workers did not know the rules."³⁵ Instead of helping poll workers focus on election rules, von Spakovsky fosters unfounded fears in the legitimacy of our elections. Further, if poll workers choose to scrutinize national origin minorities particularly closely and prevent eligible voters from voting, they may violate federal laws against discrimination in elections.

C. Voter Intimidation

Unlike allegations of non-citizen voting, which are largely unsupported, there have been recent concrete cases of extreme voter intimidation of Latinos and others at the polls. Vigilantes and others have systematically targeted voters because of their race, ethnicity or other traits. Thanks to von Spakovsky and Dobbs's hyperbolic reports of non-citizen voting, these groups may now think that they have grounds for a repeat performance of their past discrimination.

The Mexican American Legal Defense and Educational Fund (MALDEF) has chronicled incidents in which voters have been unfairly and unlawfully harassed and threatened on Election Day. In testimony before the Senate Judiciary Committee in June, 2007, MALDEF President John Trasviña recounted such incidents.³⁶ In 2006, for

³⁵ *Protecting the Constitutional Right to Vote for All Americans Before the S. Judiciary Comm.*, 110th Cong. (2008) (statement of Jonah Goldberg, Director, National Campaign for Fair Elections, Lawyers' Committee for Civil Rights) available at <http://judiciary.senate.gov/hearing.cfm?id=3368>.

³⁶ *Prevention of Deceptive Practices and Voter Intimidation in Federal Elections: Hearing on S.453 Before the S. Judiciary Comm.*, 110th Cong. (2008) (statement by John Trasviña, President of MALDEF) available at http://judiciary.senate.gov/testimony.cfm?id=2798&wit_id=6514.

instance, MALDEF attorneys watched vigilantes single-out Latinos in Tucson, Arizona. These vigilantes, one of whom carried a firearm, “asked Latino voters pointed questions about their political views, wrote down Latino voters’ personal information, and videotaped them as they went to cast their vote.”³⁷ MALDEF has also documented intimidating, misleading letters sent by the campaign for a major party congressional candidate to Latinos in Orange County, California in 2006.³⁸ By raising the specter of non-citizen voting, von Spakovsky not only misleads the public about the problems that affect our voting systems. His report could also provide fuel for discrimination and intimidation as we approach the November elections.

D. The Scope of Actual Threats to Democracy

The ramifications of the problems described above—which hardly comprise a complete list of phenomena that may disenfranchise voters—should not be underestimated. One study conducted by the California Institute of Technology (CalTech) and the Massachusetts Institute of Technology (MIT), for instance, has estimated that the problems listed above resulted in *4-6 million* eligible voters being prevented from exercising their right in the 2000 general elections.³⁹ Von Spakovsky’s figures, many of which are purely speculative, pale in comparison to the number of voters who may have their vote lost by problems that have yet to be adequately fixed.

Our flawed voting systems do create substantial challenges to free and fair elections — just not the ones von Spakovsky highlights. From erroneous registration lists to overly restrictive voter identification requirements, America’s voting systems continue

³⁷ *Id.*

³⁸ *Id.*

³⁹ Press Release: *Cal-Tech team finds 4-6 million votes lost in the 2000 election; Nationwide reforms outlined in report*, July 16, 2001, available at http://www.vote.caltech.edu/press/MIT_7-16-01.pdf.

to face a variety of problems more pressing than non-citizen voting.

V. Conflating Non-Citizen Voting with Voter Fraud

Another problem with coverage of von Spakovsky's report is that it conflates non-citizen voting with actual fraud. Dobbs's also does this when he states that "[i]f this year's presidential election remains as close as it appears to be now, this election could in fact be decided by fraud."⁴⁰ The rare instances of non-citizen voting that do occur are not automatically fraudulent. To commit voter fraud, individuals must "cast ballots despite knowing that they are ineligible to vote, in an attempt to defraud the election system."⁴¹ The crime of voting fraud, then, cannot be committed without a requisite intent. By using the strong label of 'voter fraud,' then, Dobbs makes an unwarranted generalization that all non-citizen voting constitutes voter fraud. Von Spakovsky, too, makes the same mistake by suggesting that authorities prosecute non-citizen voting—as if that very act in itself stands as a crime. In fact, the few documented instances of non-citizen voting typically result from innocent errors, not intentional acts of improper voting.

VI. Von Spakovsky's Flawed Proposals

In light of his excessive speculation and narrow diagnosis of election problems, it is not surprising that von Spakovsky makes a number of flawed policy suggestions. These recommendations are not supported by facts. Three of his proposals deserve particular attention for their potential harm to U.S. election systems.

⁴⁰ *Lou Dobbs Tonight*, *supra* n. 1.

⁴¹ Justin Levitt, *supra* n. 9, at 4.

A. Proof of Citizenship Laws

Von Spakovsky recommends that all eligible voters provide proof of American citizenship when they register to vote.⁴² Von Spakovsky suggests that such a requirement should use the same standard as proof of employment.⁴³ He ignores the fact that citizenship documentation requirements are more effective at disenfranchising eligible U.S. citizen voters than preventing non-citizens from voting. Many voters do not always carry the requisite forms of identification that would be required to register through voter registration drives. Few people regularly carry, for example, their passport, and some voters may not even have one.

In addition, the burdens of proof-of-citizenship requirements, like poll taxes, fall disproportionately upon low-income and minority voters. A 2001 study by the Commission on Federal Election Reform found that 6 to 10 percent of voting-age Americans do not have any identification issued by the state and that most of these voters have limited funds.⁴⁴ Voting experts Tova Wang and Jonah Goldman have found that “[t]he citizens who do not have voter identification are mostly poor, minority, elderly, disabled, and young voters.”⁴⁵ In order to justify the excessive burden identification laws would place on eligible voters, proponents have to fall back on unsupported allegations of widespread voter fraud.

The burden placed on voters—and their overall disproportionate impact on particular communities—explains why voting rights laws have been a focal point of

⁴² Von Spakovsky, *supra* n. 2, at 25.

⁴³ *Id.*

⁴⁴ National Commission on Election Reform, To Assure Pride and Confidence – Task Force Reports to Accompany the Report of the National Commission on Election Reform, Chapter 6 – Verification of Identity, at 4 (2001), available at http://www.tcf.org/Publications/ElectionReform/NCFER/hansen_chap6_verification.pdf.

⁴⁵ Tova Andrea Wang and Jonah H. Goldman, *Photo ID Requirement Compromises Voter Rights*, The Press-Enterprise, Nov. 6, 2005, available at <http://www.tcf.org/print.asp?type=NC&pubid=1133>.

much civil rights litigation. Currently in Arizona, MALDEF is challenging a restrictive voting law that requires, among other things, proof of citizenship for voter registration. Von Spakovsky cites the Arizona law with approval, praising it for the fact that it has prevented over 31,000 individuals from registering to vote.⁴⁶ What he fails to acknowledge, however, is MALDEF has found (and is asserting in federal district court) that the Arizona law has in fact prevented eligible voters from registering. One plaintiff in MALDEF's case, for example, is an eligible voter who is a Vietnam veteran who fought for the freedoms that he is now being denied. So far, moreover, it has not been shown that any of the disqualified voters are non-citizens, let alone undocumented immigrants.

B. Increased Prosecution

Despite his legal background, von Spakovsky betrays an elementary mistake when he proposes the following: "Local district attorneys must be made to realize that registration and voting by non-citizens are offenses against the basic principles of our democratic system and that such cases must be prosecuted."⁴⁷ Here, von Spakovsky makes the same mistake made by Lou Dobbs in his report on CNN. Non-citizen voting, when it does occur, does not automatically become a prosecutable offense. To be criminally punishable, the voter must have voted or registered to vote while knowing that he or she was ineligible to do so. Only with this requisite intent do a voter's actions constitute voter fraud.⁴⁸ Indeed, in most cases an act can be a crime only if the suspect maintained the state of mind to intentionally commit the act.

⁴⁶ Von Spakovsky, *supra* n. 2, at 7.

⁴⁷ Von Spakovsky, *supra* n. 2, at 10.

⁴⁸ Certain criminal acts that are treated under federal law as "strict liability" offenses—that is, acts that do not require a particular mental intent in order to be punishable. Voting fraud, however, is not a strict liability offense.

C. Misuse of E-Verify System

One of von Spakovsky's other suggestions concerns the government-run E-Verify program and features so many troubling assumptions that it should be quoted in full:

*The database, known as E-Verify, that is being used by U.S. employers to check the citizenship status of prospective employees should be made available to election officials and administrators of the statewide registration databases required by HAVA so that election officials can run database comparisons to identify registered voters who are not citizens.*⁴⁹

E-Verify is, essentially, an online version of the former Basic Pilot / Employment Eligibility Verification Program that verifies the employment eligibility of individuals. It does this by checking whether the information on a standard Social Security Card matches the information on a form of government-recognized identification. If the information doesn't match, employers receive a tentative nonconfirmation (TNC) letter acknowledging the mismatch. The employer is supposed to immediately tell the employee, who then has ten days to rectify the matter.

A common misperception of E-Verify, which von Spakovsky makes, is that it effectively checks citizenship and immigration status in general. As noted above, however, E-Verify merely checks whether the information on a standard Social Security Card matches the information on a form of identification recognized by the federal government. Matching the information verifies eligibility for employment, which is *not* the same thing as verification of citizenship. To substantiate this point one needs to look no further than an I-9 form itself, which is used to verify employee eligibility. The form states that "[t]he purpose of this form is to document that each new employee (both citizen *and non-citizen*) hired after November 6, 1986 [the date on which the President signed into law the Immigration Reform and Control Act of 1986] is authorized to work

⁴⁹ Von Spakovsky, *supra* n. 2, at 10.

in the United States.”⁵⁰ Millions of non-citizens are, of course, eligible to work in the United States under immigrant visas. Determining whether an individual is eligible to work, therefore, is quite different from determining citizenship and voter eligibility. Von Spakovsky clearly does not understand this when he proposes comparing E-Verify data with that on voter rolls.

Even being classified by E-Verify as ineligible to work, moreover, should not be viewed as determinative. The Social Security Administration admits that its database is full of many errors that concern actual U.S. citizens: the SSA Office of the Inspector General estimates that nearly 13 million out of 17 million errors in its database regard U.S. citizens.⁵¹ Clearly it would not be sound, as von Spakovsky wants, to compare information in a deeply flawed database with information in voter registration rolls. Such a recommendation would disenfranchise millions of citizens.

VII. Conclusion

Von Spakovsky has a history of advocating troubling approaches towards “voter fraud” and other goals associated with a partisan political agenda. Before von Spakovsky finally withdrew his name from consideration for a permanent seat on the FEC, numerous voting and civil rights groups denounced his partisanship and deemed him unfit to protect the most fundamental right of Americans: the right to vote.⁵²

⁵⁰ Federal I-9 Form (through June 30, 2009), available at <http://www.uscis.gov/files/form/I-9.pdf>. [Emphasis added].

⁵¹ *Congressional Response Report: Accuracy of the Social Security Administration’s Numident File*, Report No. A-08-06-26100, Dec. 2006, at Appendix C, available at <http://www.ssa.gov/oig/ADOBEPDF/A-08-06-26100.pdf>.

⁵² Letter from Barbara R. Arnwine, Executive Director for the Lawyers’ Committee for Civil Rights Under Law (Oct. 3, 2007) available at <http://www.truthaboutfraud.org/pdf/10-03-07%20LCCRUL%20Senate%20Letter.pdf>; See also Letter from Laura MacCleery, Director of Public Citizen’s Congress Watch, and Craig Hollman, Public Citizen Lobbyist, (Oct. 3, 2007) available at <http://www.truthaboutfraud.org/pdf/100307%20Public%20Citizen%20full%20Senate%20letter.pdf>

Perhaps the most damning criticism of von Spakovsky, however, has come from his former colleagues in the Voting Section of the Department of Justice's (DOJ) Civil Rights Division:

While he was at the Civil Rights Division, Mr. von Spakovsky played a major role in the implementation of practices which injected partisan political factors into decision-making on enforcement matters and into the hiring process, and included repeated efforts to intimidate career staff. Moreover, he was the point person for undermining the Civil Rights Division's mandate to protect voting rights . . . Over the past five years, the priorities of the Voting Section have shifted from its historic mission to enforce the nation's civil rights laws without regard to politics, to pursuing an agenda which placed the highest priority on the partisan political goals of the political appointees who supervised the Section. We write to urge you not to reward one of the architects of that unprecedented and destructive change with another critical position [at the FEC] enforcing our country's election laws.⁵³

That former career professionals felt obligated to publicly criticize von Spakovsky speaks volumes about his unsettling record regarding voting rights.

Regardless of his troubling and partisan past, however, von Spakovsky's report suffers from a serious disconnect with the facts. As we approach an historic election, this nation deserves better. Viewers of Dobbs's story and readers of von Spakovsky's study may get an inflated sense of non-citizen voting and may lose faith in our democratic processes.

Even more seriously, von Spakovsky's recommendations, were they to be implemented, would effectively disenfranchise countless eligible U.S. citizen voters. In the context of debunking claims of widespread voter fraud in Ohio in 2004, James Sample of the Brennan Center at NYU makes the following point: "Americans are more

⁵³ Letter from Joseph D. Rich (former Chief of the Voting Section and Civil Rights Division Attorney) et al. (June 11, 2007) available at <http://www.truthaboutfraud.org/pdf/06-11-07%20Former%20Voting%20Section%20Staff%20Letter.pdf>; See also Letter from Joseph D. Rich (former Chief of the Voting Section and Civil Rights Division Attorney) et al. (June 18, 2007), available at: <http://www.truthaboutfraud.org/pdf/06-18-07%20Former%20Voting%20Section%20Staff%20Letter.pdf>.

likely to be struck by lightning [than to have committed voting fraud in Ohio]. Granted, lightning does strike, but we're not yet ready to pass legislation requiring a dome for the planet."⁵⁴ The same sentiment may be applied to allegations of non-citizen voting. Von Spakovsky might view himself as a pioneer on the forefront of election reforms, but he better resembles one who proudly battles a mirage.

⁵⁴ James Sample, *It's Not Fraud, It's Alienated Voters*, Politico.com, Nov. 11, 2007, available at http://www.brennancenter.org/content/resource/its_not_fraud_its_alienated_voters/.